

MATERIALS
LIFE INSURANCE AND ANNUITIES (A) COMMITTEE
SUNDAY, DECEMBER 8, 2019
JW MARRIOTT AUSTIN -- LONE STAR BALLROOM A-C -- LEVEL 3

AGENDA ITEM #1

Consider Adoption of its Nov. 4 Minutes

Draft: 11/11/19

Life Insurance and Annuities (A) Committee
Conference Call
November 4, 2019

The Life Insurance and Annuities (A) Committee met via conference call Nov. 4, 2019. The following Committee members participated: Doug Ommen, Chair, Lindsay Bates, Russ Gibson and Mike Yanacheak (IA); Stephen C. Taylor, Vice Chair, represented by Philip Barlow (DC); Jim L. Ridling represented by Steve Ostlund (AL); Keith Schraad represented by Erin Klug and Vincent Gosz (AZ); Dean L. Cameron represented by Weston Trexler (ID); James J. Donelon, Tom Travis and Frank Opelka (LA); Jon Godfread represented by John Arnold and Ross Hartley (ND); Bruce R. Ramge represented by Matt Holman (NE); Linda A. Lacewell represented by James Regalbuto and Mark McLeod (NY); Jillian Froment and Peter Weber (OH); Hodgen Mainda represented by Brian Hoffmeister and Rachel Jrade-Rice (TN); and Mark Afafe represented by Jerry DeArmond and Richard Wicka (WI). Also participating were: Perry Kupferman (CA); Jason Lapham (CO); David Altmaier represented by Chris Struk (FL); Teresa Winer (GA); Mike Chrysler (IL); Barbara Torkelson, Tate Flott and Julie Holmes (KS); Mary Mealer (MO); Regan Hess (MT); Denise Lamy (NH); Ron Kreiter (OK); Thomas Kilcoyne (PA); Sarah Neil (RI); Mike Boerner and Deanna Osmonson (TX); and Tanji Northrup and Tomasz Serbinowski (UT).

1. Adopted its 2020 Proposed Charges

Commissioner Ommen explained that the Committee's charges reflect the addition of two new working groups—the Accelerated Underwriting (A) Working Group and the Retirement Security (A) Working Group—adopted by the Committee at the Summer National Meeting. Birny Birnbaum (Center for Economic Justice—CEJ) submitted revisions to the Committee's charges. He explained that these changes are necessary because the Working Groups are not coordinating with each other, and his proposed revisions will better reflect the current work being undertaken, as well as allow for much needed coordination on life and annuity disclosures being undertaken currently.

Mr. Ostlund said Alabama is supportive of Mr Birnbaum's suggestions and would like to discuss them at the upcoming Fall National Meeting.

Mr. Ostlund made a motion, seconded by Mr. Wicka, to adopt the Committee's 2020 proposed charges (*see NAIC Proceedings – Fall 2019, Executive (EX) Committee and Plenary, Attachment 7*). The motion passed unanimously.

2. Adopted the Life Actuarial (A) Task Force's 2020 Proposed Charges

Mr. Boerner explained that most of the changes to the Task Force's charges were updates necessitated by the completion of the variable annuity (VA) framework.

Mr. Wicka made a motion, seconded by Commissioner Mainda, to adopt the Task Force's 2020 proposed charges (*see NAIC Proceedings – Fall 2019, Executive (EX) Committee and Plenary, Attachment 7*). The motion passed unanimously.


3. Adopted AG 52

Mr. Boerner said *Actuarial Guideline LII—Variable Annuity Early Adoption* (AG 52) is informational only and explains the availability of early adoption of the VA framework at a company's election. Brian Bayerle (American Council of Life Insurance—ACLI) said the ACLI is supportive of AG 52.

Director Schraad made a motion, seconded by Mr. Wicka, to adopt AG 52 (*see NAIC Proceedings – Fall 2019, Executive (EX) Committee and Plenary, Attachment 7*). The motion passed unanimously.

4. Adopted the 2020 GRET

Mr. Boerner said the Generally Recognized Expense Table (GRET) is updated by the Society of Actuaries (SOA) every year, and it is adopted by the Committee and NAIC membership. He said the GRET is referenced in the *Life Insurance Illustrations Model Regulation* (#582) to be used as assumed experience in illustrations, and it is used by 25–28% of companies.

Mr. Ostlund made a motion, seconded by Mr. Wicka, to adopt the 2020 GRET (*see NAIC Proceedings – Fall 2019, Executive (EX) Committee and Plenary, Attachment *). The motion passed unanimously.

5. Adopted its Summer National Meeting Minutes

Commissioner Donelon made a motion, seconded by Mr. Ostlund, to adopt the Committee's Aug. 4 minutes (*see NAIC Proceedings – Summer 2019, Life Insurance and Annuities (A) Committee*). The motion passed unanimously.

Having no further business, the Life Insurance and Annuities (A) Committee adjourned.

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AGENDA ITEM #2

Consider Adoption of the Annuity Suitability (A) Working Group Report (materials pending)
Discuss Comments Received on the Suitability in Annuity Transactions Model Regulation (#275)

Draft: 11/5/19

Model #275

Comments are being requested on this draft by Tuesday, Nov. 26, 2019. The revisions to this draft reflect changes made from the existing model. Comments should be sent only by email to Jolie Matthews at jmatthews@naic.org.

SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

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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 ~~and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products~~ so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately 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.

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.

Section 2. Scope

This regulation shall apply to any sale or recommendation ~~to purchase, exchange or replace of~~ an annuity ~~made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.~~

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.

Section 4. Exemptions

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

- A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;
- 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;
- ~~C.(5)~~ Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- ~~D.(6)~~ Formal prepaid funeral contracts.

Section 5. Definitions

- A. “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.
- ~~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.~~
- ~~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:~~
 - ~~(1) Age;~~
 - ~~(2) Annual income;~~
 - ~~(3) Financial situation and needs, including debts and other obligations;~~
 - ~~(4) Financial experience;~~
 - ~~(5) Insurance needs;~~
 - ~~(6) Financial objectives;~~
 - ~~(7) Intended use of the annuity;~~
 - ~~(8) Financial time horizon;~~
 - ~~(9) Existing assets or financial products, including investment, annuity and insurance holdings;~~
 - ~~(10) Liquidity needs;~~
 - ~~(11) Liquid net worth;~~

- (12) Risk tolerance, including but not limited to, willingness to accept non-guaranteed elements in the annuity;
- (13) Financial resources used to fund the annuity; and
- (14) Tax status.
- BD.** “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].
- CE.** “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].
- DE.** “FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.
- EG.** “Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
- ~~F. “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.~~
- ~~H. “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.~~
- I.** (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.
- (2) “Material conflict of interest” does not include cash compensation or non-cash compensation.
- J.** “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.
- K.** “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.
- L.** “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.
- GM.** (1) “Recommendation” means advice provided by ~~an insurance~~ a producer, ~~or an insurer where no producer is involved~~, to an individual consumer that was intended to result or does result results in a purchase, an exchange or a replacement of an annuity in accordance with that advice.
- (2) Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.
- HN.** “Replacement” means a transaction in which a new ~~policy or contract~~annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer ~~if there is no~~whether or not a producer is involved, that by reason of the transaction, an existing ~~annuity or other insurance policy or contract~~ has been or is to be any of the following:
- (1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;

- (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;
- (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;
- (4) Reissued with any reduction in cash value; or
- (5) Used in a financed purchase.

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.

~~I. “Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:~~

- ~~(1) Age;~~
- ~~(2) Annual income;~~
- ~~(3) Financial situation and needs, including the financial resources used for the funding of the annuity;~~
- ~~(4) Financial experience;~~
- ~~(5) Financial objectives;~~
- ~~(6) Intended use of the annuity;~~
- ~~(7) Financial time horizon;~~
- ~~(8) Existing assets, including investment and life insurance holdings;~~
- ~~(9) Liquidity needs;~~
- ~~(10) Liquid net worth;~~
- ~~(11) Risk tolerance; and~~
- ~~(12) Tax status.~~

~~O. “SEC” means the United States Securities and Exchange Commission.~~

Section 6. Duties of Insurers and ~~of Insurance~~ Producers

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

~~A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer’s suitability information, and that there is a reasonable basis to believe all of the following:~~

- (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.
- (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 requirements under this subsection do not create a fiduciary obligation or relationship and only 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.

(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) An affirmative statement on whether the producer is licensed and authorized to sell the following products:
 - (I) Fixed annuities;
 - (II) Fixed indexed annuities;
 - (III) Variable annuities;
 - (IV) Life insurance;
 - (V) Variable life insurance;
 - (VI) Mutual funds;
 - (VII) Stocks and bonds;
 - (VIII) Securities options;
 - (IX) Certificates of deposit; and
 - (X) Other relevant securities, insurance or investments
(Describe): _____;
 - (iii) An affirmative statement describing the insurers the producer is authorized, contracted (or appointed), or otherwise able to sell insurance products for, using the following descriptions:
 - (I) One insurer or insurance holding company group;
 - (II) From multiple insurers; or
 - (III) From multiple insurers although I am primarily contracted with one insurer.
 - (iv) 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

- (v) A notice of the consumer's right to request additional information regarding cash compensation described in subparagraph (b) of this paragraph;

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

- (b) Upon request of the consumer or the consumer's designated representative, 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; 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~~ the consumer has been reasonably-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 ~~paragraph (1)~~ 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.

- ~~(2) The consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization or death or living benefit;~~

- ~~(3) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and~~

- ~~(4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:~~

- ~~(a) 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;~~

- ~~(b) The consumer would benefit from product enhancements and improvements; and~~

- ~~(c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.~~

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

- (4) Documentation obligation. A producer shall at the time of recommendation or sale:

- (a) Make a written record of any recommendation and the basis for the recommendation subject to this regulation;
- (b) Obtain a 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
- (c) Obtain a 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.

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

~~B. Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer’s suitability information.~~

~~C. Except as permitted under subsection D, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer’s suitability information.~~

(5) Application of the best interest obligation. Any requirement applicable to a producer under this subsection shall apply to every producer who has exercised material control or influence in the making of an individualized recommendation and has directly received compensation as a result, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

~~DB.~~ Transactions not based on a recommendation.

(1) ~~Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any~~no obligation to a consumer under subsection A(1) ~~or C~~ 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 ~~suitability~~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 insurer or the insurance~~ 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.

C. Supervision system.

- (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.~~
- E. ~~An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:~~
- (1) ~~Make a record of any recommendation subject to section 6A of this regulation;~~
- (2) ~~Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and~~
- (3) ~~Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.~~
- F. ~~(1)(2)~~ An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its ~~insurance~~ 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 ~~insurance~~ producer training manuals;
- (b) The insurer shall establish and maintain standards for ~~insurance~~ producer product training and shall establish and maintain reasonable procedures to require its ~~insurance~~ 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 ~~insurance~~ producers;
- (d) The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure ~~that~~ there is a reasonable basis to determine that ~~a recommendation is suitable~~ 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 ~~suitable~~ in compliance with subsections A, B, D and E. This may include, but is not limited to, confirmation of the consumer's suitability ~~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 suitability ~~consumer profile~~ information after issuance or delivery of the annuity; ~~and~~
- (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 within a limited period of time. The requirements of this subparagraph are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and

~~(F)(i)~~ (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.

~~(2)(3)~~ (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under ~~paragraph (1)~~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 ~~paragraph (1)~~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.

~~(3)(4)~~ An insurer is not required to include in its system of supervision ~~an insurance;~~

~~(a)~~ A producer's recommendations to consumers of products other than the annuities offered by the insurer; or

~~(b)~~ Include consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

~~GD.~~ Prohibited Practices. Neither a producer nor an insurer shall ~~An insurance producer shall not~~ dissuade, or attempt to dissuade, a consumer from:

(1) Truthfully responding to an insurer's request for confirmation of ~~the suitability~~consumer profile information;

(2) Filing a complaint; or

(3) Cooperating with the investigation of a complaint.

~~HE.~~ Safe harbor.

(1) ~~Recommendations and sales of annuities~~Sales made in compliance with comparable standards ~~FINRA requirements pertaining to suitability and supervision of annuity transactions~~ shall satisfy the requirements under this regulation. This subsection applies to ~~FINRA broker-dealer~~all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard regardless of whether the particular recommendation or sale is required to otherwise comply with such comparable standard if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner's ability to investigate and enforce ~~(including investigate)~~ the provisions of this regulation.

Drafting Note: Non-compliance with comparable standards ~~FINRA requirements~~ means that the ~~broker-dealer transaction recommendation or sale~~ is subject to compliance with the ~~suitability~~ requirements of this regulation.

- (2) For paragraph (1) to apply, an insurer shall:
 - (a) Monitor the ~~FINRA member broker-dealer~~ relevant conduct of the financial professional seeking to rely on paragraph (1) 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 using information collected in the normal course of an insurer's business; and
 - (b) Provide to the ~~FINRA member broker-dealer~~ entity responsible for supervising the financial professional seeking to rely on paragraph (1), such as the financial professional's broker-dealer or investment adviser registered under federal or state securities laws, information and reports that are reasonably appropriate to assist ~~the FINRA member broker-dealer~~ such entity to maintain its supervision system.
- (3) For purposes of this subsection, "financial professional" means 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; or
 - (c) A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or Section 4975(f)(8)(J)(i) of the Internal Revenue Code (IRC).

Drafting Note: The requirement that a producer be "regulated and acting" as a broker-dealer, an registered representative of a broker-dealer, an investment adviser, an investment adviser representative or a plan fiduciary means that a producer who is not explicitly acting in compliance with the relevant comparable standards, as specified in paragraph (4) below, is not eligible for this safe harbor and is subject to compliance with the requirements of this regulation.

- (4) For purposes of this subsection, "comparable standards" means:
 - (a) With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest and any amendments or successor regulations thereto;
 - (b) With respect to investment advisers registered under federal or state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940, including but not limited to, SEC Form ADV and SEC interpretations. Notwithstanding the foregoing, recommendations of annuities by a state registered investment adviser or investment adviser representative shall only be eligible for the safe harbor provided under this subsection if the state in which the investment adviser or investment adviser representative is registered has adopted rules consistent with SEC Rule 206(4)-7 and any amendments or successor regulations thereto; and

Drafting Note: SEC Rule 206(4)-7 requires investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violation of the federal securities laws, review those policies and procedures annually for their adequacy and the effectiveness of their implementation, and designate a chief compliance officer to be responsible for administering the policies and procedures.

- (c) With respect to plan fiduciaries, means the fiduciary duties and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

Section 7. ~~Insurance~~ Producer Training

- A. ~~An insurance~~ A producer shall not solicit the sale of an annuity product unless the ~~insurance~~ producer has adequate knowledge of the product to recommend the annuity and the ~~insurance~~ producer is in compliance with the insurer's standards for product training. ~~An insurance~~ A producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.
- B. (1) (a) ~~An insurance~~ 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) ~~Insurance p~~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 ~~insurance~~ 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.

- ~~(6)~~(7) 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)~~(8) 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)~~(9) 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.
- (10) The satisfaction of the 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.
- ~~(9)~~(11) An insurer shall verify that ~~an insurance~~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.

Section 8. Compliance Mitigation; Penalties

- 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 ~~insurance~~ producer, the commissioner may order:
- (1) An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this regulation by the insurer's insurer, an entity contracted to perform the insurer's supervisory duties or by ~~its insurance producer's, violation of this regulation~~the producer;
 - (2) A general agency, independent agency or the ~~insurance~~ producer to take reasonably appropriate corrective action for any consumer harmed by the ~~insurance~~ producer's violation of this regulation; and
 - (3) Appropriate penalties and sanctions.
- B. Any applicable penalty under [insert statutory citation] for a violation of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

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.

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.

Section 9. ~~{Optional}~~ Recordkeeping

- A. Insurers, general agents, independent agencies and ~~insurance~~ 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 ~~an insurance~~ producer.

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.

- 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.

Drafting Note: This section may be unnecessary in States that have a comprehensive recordkeeping law or regulation.

Section 10. Effective Date

The amendments to this regulation shall take effect ~~[six (6)]~~X months after the date the regulation is adopted or on [insert date], whichever is later.

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"/> <u>Fixed or Fixed Indexed Annuities</u> | <input type="checkbox"/> <u>Mutual Funds</u> |
| <input type="checkbox"/> <u>Variable Annuities</u> | <input type="checkbox"/> <u>Stocks/Bonds</u> |
| <input type="checkbox"/> <u>Life Insurance</u> | <input type="checkbox"/> <u>Securities Options</u> |
| <input type="checkbox"/> <u>Variable Life Insurance</u> | <input type="checkbox"/> <u>Certificates of Deposits</u> |
| <input type="checkbox"/> <u>Other Relevant Securities, Insurance or Investments (Describe):</u> _____ | |

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

- | | |
|---------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
| <input type="checkbox"/> <u>Products from ONLY ONE INSURER or Insurance Holding Company Group</u> | <input type="checkbox"/> <u>Products from Multiple Insurers</u> |
| <input type="checkbox"/> <u>Products from Multiple Insurers although I am primarily contracted with one insurer</u> | |

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

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

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Suitability in Annuity Transactions Model Regulation (#275)
Stakeholder Suggested Revisions Received by Nov. 26, 2019, Comment Deadline
(Assuming the Nov. 5 proposed revisions are accepted)

Title	
Suitability in Annuity Transactions Model Regulation	
<i>No comments received</i>	
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.	
Center for Economic Justice (CEJ)	A. The purpose of this regulation is to require producers, <u>as defined in this regulation</u> , 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.	
<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>	
IIABA	B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation <u>or to subject a producer to civil liability under the best interest standard of care outlined in Section 6 of this regulation or under standards governing the conduct or a fiduciary or a fiduciary relationship.</u>
Section 2. Scope	
This regulation shall apply to any sale or recommendation of an annuity.	
CEJ	Does the revised language apply to exchanges?

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.	
IIABA	Expressed concern with adopting revisions by regulation.
Section 4. Exemptions	
Unless otherwise specifically included, this regulation shall not apply to transactions involving:	
No comments received	
A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;	
No comments received	
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.	
<i>No comments received</i>	
Additional Suggested Subsections	
<i>None suggested</i>	
Section 5. Definitions	
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.
<i>No comments received</i>	
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>	
C. Consumer profile information	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: <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) Insurance needs; (6) Financial objectives; (7) Intended use of the annuity; (8) Financial time horizon;

	<p>(9) Existing assets or financial products, including investment, annuity and insurance holdings;</p> <p>(10) Liquidity needs;</p> <p>(11) Liquid net worth;</p> <p>(12) Risk tolerance, including but not limited to, willingness to accept non-guaranteed elements in the annuity;</p> <p>(13) Financial resources used to fund the annuity; and</p> <p>(14) Tax status.</p>
<i>No comments received</i>	
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.
<i>No comments received</i>	
G. Insurer	“Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
<i>No comments received</i>	
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.

<i>No comments received</i>	
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>
CEJ	<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>
J. Non-cash compensation	<p>“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.</p>
<i>No comments received</i>	
K. Non-guaranteed elements	<p>“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.</p>
<i>No comments received</i>	
L. Producer	<p>“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.</p>
<i>No comments received</i>	
M. Recommendation	<p>(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.</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.</p>
CEJ	<p>(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.</p>

	(2) "Recommendation" does not include general communication to the public, generalized consumer services assistance or administrative support, general educational information and tools, <u>or</u> prospectuses, or other product and sales material .
N. 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 annuity or other insurance policy 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>
<i>No comments received</i>	
O. SEC	"SEC" means the United States Securities and Exchange Commission
<i>No comments received</i>	
Additional Suggested Definitions	
CEJ	"Exchange" means ?
Section 6. Duties of Insurers and Producers	
A. Best Interest Obligations. A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances	

known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:	
CEJ	A best interest standard should be defined as a recommendation for a product or products that best meets the consumer's needs without consideration of the producer's interest.
IIABA	<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 has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:</p> <p style="text-align: center;">OR</p> <p>A. Best Interest Obligations. A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer<u>do so</u> under the circumstances known at the time the recommendation is made, and without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:</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> <p>(d) The requirements under this subsection do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this regulation.</p> <p>(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.</p>	

<p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>	
Fixed Annuity Consumer Choice Campaign (FACC)	<p>*****</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. <u>Producers shall be held to standards applicable to producers with similar authority and licensure.</u></p> <p>*****</p> <p><u>(k) Nothing in this regulation should be construed to require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit or negotiate insurance in this state, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this regulation; provided the producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.</u></p>
IIABA	<p>*****</p> <p>(d) The requirements under this subsection do not create <u>a duty of loyalty or</u> a fiduciary obligation or relationship and only create a regulatory obligation as established in this regulation.</p> <p>*****</p>
(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) An affirmative statement on whether the producer is licensed and authorized to sell the following products: (I) Fixed annuities; (II) Fixed indexed annuities; (III) Variable annuities; (IV) Life insurance; (V) Variable life insurance; (VI) Mutual funds; (VII) Stocks and bonds; (VIII) Securities options; (IX) Certificates of deposit; and (X) Other relevant securities, insurance or investments (Describe): _____;

(iii) An affirmative statement describing the insurers the producer is authorized, contracted (or appointed), or otherwise able to sell insurance products for, using the following descriptions: (I) One insurer or insurance holding company group; (II) From multiple insurers; or (III) From multiple insurers although I am primarily contracted with one insurer.

(iv) 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

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

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

(b) Upon request of the consumer or the consumer’s representative, 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; 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.

CEJ	(a) Prior to or at the time of the recommendation or sale of an annuity <u>the consumer providing to the producer the consumer’s consumer profile information</u> , the producer shall prominently disclose to the consumer on a form substantially similar to the “Producer Relationship Disclosure Form” in Appendix A:
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	<p style="text-align: center;">*****</p> <p>[Move to care obligation: (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 style="text-align: center;">*****</p>
IIABA	<p>(2) (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 style="text-align: center;">*****</p> <p><u>(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.</u></p> <p style="text-align: center;">*****</p>
(3) Conflict of interest obligation. A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.	
IIABA	<p>(3) Conflict of interest obligation. A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.</p>
(4) Documentation obligation. A producer shall at the time of recommendation or sale:	
<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> <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>	
No comments received	
(5) Application of the best interest obligation. Any requirement applicable to a producer under this subsection shall apply to every producer who has exercised material control or influence in the making of an individualized recommendation and has directly received compensation as a result, regardless of whether the	

<p>producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.</p>	
CEJ	<p>(5) Application of the best interest obligation. Any requirement applicable to a producer under this subsection shall apply to every producer who has exercised material control or influence in the making of a an individualized recommendation and has directly received compensation as a result <u>of the recommendation or sale</u>, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.</p>
<p>B. Transactions not based on a recommendation.</p> <p>(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.</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>	
<i>No comments received</i>	
<p>C. Supervision system. (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>(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:</p> <p>(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;</p> <p>(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;</p> <p>(c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its producers;</p> <p>(d) The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and</p>	

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

(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) A producer's recommendations to consumers of products other than the annuities offered by the insurer; or (b) Include consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

CEJ	***** (2) An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its producers'
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	<p>compliance with this regulation, including, but not limited to, the following:</p> <p style="text-align: center;">*****</p> <p>(g) The insurer shall establish and maintain reasonable procedures to identify and address potentially-suspicious consumer refusals to provide consumer profile information;</p> <p style="text-align: center;">*****</p> <p>(4) An insurer is not required to include in its system of supervision: (a) A producer’s recommendations to consumers of products other than the annuities offered by the insurer; or (b) Include consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.</p> <p>Additional suggested provision: We suggest the deletion of C(4)(b) and the addition of a requirement for the insurer to identify and address suspicious patterns of recommendations.</p> <p>Additional suggested provision: “we suggest the supervision system section include a requirement for the insurer (or an intermediary) to provide the producer with a description of the producer’s compensation which the producer can provide to the consumer consistent with the requirements for the producer to disclose compensation to the consumer.”</p>
Joint Trades¹	<p style="text-align: center;">*****</p> <p>(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:</p> <p style="text-align: center;">*****</p> <p>(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, <u>producer and consumer</u> interviews, confirmation letters, <u>producer statements or attestations</u> 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 <u>or other required information under this section</u> after issuance or delivery of the annuity;</p> <p style="text-align: center;">*****</p>
IIABA	<p style="text-align: center;">*****</p> <p>(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:</p> <p style="text-align: center;">*****</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 within a limited period of time. The requirements of this</p>

¹ Joint submission from American Council of Life Insurers (ACLI), Committee of Annuity Insurers (CAI), Financial Services Institute (FSI), Indexed Annuity Leadership Council (IALC), Insured Retirement Institute (IRI), National Association for Fixed Annuities (NAFA), National Association of Insurance and Financial Advisers (NAIFA) and Association for Advanced Life Underwriting (AALU).

	<p>subparagraph are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and</p> <p>*****</p>
<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>	
No comments received	
<p>E. Safe Harbor.</p> <p>(1) Recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements under this regulation. This subsection applies to recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard regardless of whether the particular recommendation or sale is required to otherwise comply with such comparable standard. 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 comparable standards means that recommendation or sale is subject to compliance with the requirements of this regulation.</p> <p>(2) For paragraph (1) to apply, an insurer shall: (a) Monitor the relevant conduct of the financial professional seeking to rely on paragraph (1) 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 using information collected in the normal course of an insurer’s business; and (b) Provide to the entity responsible for supervising the financial professional seeking to rely on paragraph (1), such as the financial professional’s broker-dealer or investment adviser registered under federal or state securities laws, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.</p> <p>(3) For purposes of this subsection, “financial professional” means a producer that is regulated and acting as:</p> <p>(a) A broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;</p> <p>(b) An investment adviser registered under federal or state securities laws or an investment adviser representative; or</p> <p>(c) A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or Section 4975(f)(8)(J)(i) of the Internal Revenue Code (IRC).</p>	

Drafting Note: The requirement that a producer be “regulated and acting” as a broker-dealer, an registered representative of a broker-dealer, an investment adviser, an investment adviser representative or a plan fiduciary means that a producer who is not explicitly acting in compliance with the relevant comparable standards, as specified in paragraph (4) below, is not eligible for this safe harbor and is subject to compliance with the requirements of this regulation.

(4) For purposes of this subsection, “comparable standards” means:

(a) With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest and any amendments or successor regulations thereto;

(b) With respect to investment advisers registered under federal or state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940, including but not limited to, SEC Form ADV and SEC interpretations. Notwithstanding the foregoing, recommendations of annuities by a state registered investment adviser or investment adviser representative shall only be eligible for the safe harbor provided under this subsection if the state in which the investment adviser or investment adviser representative is registered has adopted rules consistent with SEC Rule 206(4)-7 and any amendments or successor regulations thereto; and

Drafting Note: SEC Rule 206(4)-7 requires investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violation of the federal securities laws, review those policies and procedures annually for their adequacy and the effectiveness of their implementation, and designate a chief compliance officer to be responsible for administering the policies and procedures.

(c) With respect to plan fiduciaries, means the fiduciary duties and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

<i>No comments received</i>	However, some commenters expressed concern with this section.
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Suggested Additional Subsections

<i>None suggested</i>	
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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>	
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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.

(7) 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].

(8) 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].

(9) 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.

(10) 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.

(11) 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.	
No comments received	
Additional Suggested Subsections	
None suggested	
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>	
IIABA	<p>Section 8. Compliance Mitigation; Penalties; Enforcement</p> <p>*****</p> <p><u>C. The authority to enforce compliance with this regulation is vested exclusively with the commissioner.</u></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>	

No comments received	
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>	
No comments received	
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.	
Drafting Note: This section may be unnecessary in States that have a comprehensive recordkeeping law or regulation.	
No comments received	
Section 10. Effective Date	
The amendments to this regulation shall take effect [X] months after the date the regulation is adopted or on [insert date], whichever is later.	
No comments received	
Additional Suggested Model Regulation Sections	
None suggested	

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"/> Life Insurance | <input type="checkbox"/> Securities Options |
| <input type="checkbox"/> Variable Life Insurance | <input type="checkbox"/> Certificates of Deposits |
| <input type="checkbox"/> Other Relevant Securities, Insurance or Investments (Describe):
_____ | |

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

- ☐ Products from ONLY ONE INSURER or Insurance Holding Company Group
- ☐ 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:	
Joint Trades	<p>Add at the end of the section titled "Insurance Authorization":</p> <p><i>When I sell products other than insurance products, I am not engaging in my capacity as an insurance producer.</i></p>
CEJ	<p>Revise Appendix A as follows:</p> <p style="text-align: center;">APPENDIX A</p> <p style="text-align: center;">PRODUCER RELATIONSHIP DISCLOSURE FORM</p> <p>Date: _____</p> <p>INSURANCE AGENT/PRODUCER INFORMATION ("Me", "I", "My")</p> <p>First Name: _____ Last Name: _____</p> <p>Firm Name: _____ Website: _____</p> <p>Business Mailing Address: _____</p> <p>Business Telephone Number: _____</p> <p>Email Address: _____</p> <p>Insurance License # _____ <u>My firm has been selling XX Years</u></p> <p><u>You can view my record as an insurance agent by going to the Department of Insurance website:</u></p> <p><u>I am / am not also licensed to sell securities. My securities license # is</u></p> <p><u>You can check my record as a broker at BrokerCheck: https://brokercheck.finra.org/</u></p> <p>CLIENT INFORMATION ("You", "Your")</p> <p>First Name: _____ Last Name: _____</p> <p>INSURANCE AUTHORIZATION <u>What Types of Products Can I Sell to You?</u></p>

I am licensed and authorized to sell insurance products (shown in the table below with an “I”), including annuities in [State]. ~~in accordance with state laws~~ I need a separate license to sell non-insurance financial products (shown in the table below with an “N”). The table below shows what type of insurance and non-insurance financial products I’m licensed to sell (shown by an “X” next to the product). While the product that best meets your needs may be an insurance product, other non-insurance financial products may better meet your needs. I may not be authorized to sell or discuss these non-insurance products. ~~I offer the following products:~~

- | | |
|------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
| <input type="checkbox"/> Fixed or Fixed Indexed Annuities <u>(I)</u> | <input type="checkbox"/> Mutual Funds <u>(N)</u> |
| <input type="checkbox"/> Variable Annuities <u>(I)</u> | <input type="checkbox"/> Stocks/Bonds <u>(N)</u> |
| <input type="checkbox"/> Life Insurance <u>(I)</u> | <input type="checkbox"/> Securities Options <u>(N)</u> |
| <input type="checkbox"/> Variable Life Insurance <u>(I)</u> | <input type="checkbox"/> Certificates of Deposit <u>(N)</u> s |
| <input type="checkbox"/> Other Relevant Securities, Insurance or Investments (Describe): _____ | |

Whose Insurance Products Can I Sell to You?

I may only sell insurance products from insurance companies that appoint me as their agent. The table below shows whether I am appointed by and can sell insurance products from one or many insurance companies. Insurers often have multiple insurance companies within the insurer group. While I may be able to sell insurance products from more than one company in the insurer group, if I can only sell products from that one insurer, that is shown below as “only one insurer.” ~~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 |
| <input type="checkbox"/> Products from Multiple Insurers although I am primarily contracted with one insurer | |

My Relationship with You:

- ~~☐ One-Time Transaction~~
~~☐ On-Going Relationship~~

How I’m Paid for My Work

It is important for you to understand how I’m paid for my work because who pays me and how they pay me can affect the recommendations I make to you.

My Compensation Structure:

- ☐ You pay me by _____ ~~Commissioned Transaction~~
☐ The insurance company pays me directly or indirectly by _____
~~☐ (An insurance company may pay me indirectly by paying another organization, like an Independent Marketing Organization, which then pays me for a sale.)~~ ~~An asset under management fee~~

☐ ~~Other, please describe: _____~~

~~I am required to answer your questions about who pays me for my work, how I'm paid and if the amount I'm paid varies for different types of products I recommend for your purchase. If you feel I'm not providing the information you need about how I'm paid, contact the Department of Insurance at XXX XXX XXXX.~~

~~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

Agent/Broker Signature

Date

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:	
CEJ	Replace Appendix B with the following forms:
	Consumer Refusal to Provide Information Necessary for a Best Interest Recommendation
	Do Not Sign This Form Unless You Have Read and Understand It. The Insurance Commissioner Has Created This Form for Your Protection.
	If You Have Questions That the Agent, Broker or Company Cannot Answer to Your Satisfaction, Contact the Department of Insurance at [contact info] Why are you being given this form? You're buying a complex financial product -- an annuity. To recommend a product that's in your best interest and meets your needs, the agent, broker or company needs information about you, your financial situation, insurance needs, and financial objectives. If you sign this form, it means you're refusing to give the agent, broker or company some or all of the information needed to decide if this annuity is in your best interest. You lose important protections if you refuse to give the insurance agent, broker or company accurate and complete information.

	<p>The agent is required to consider the categories of information listed below about your situation. Your insurance commissioner recommends you provide this information before you buy an annuity. If the agent discourages you from giving any of the information, don't buy the annuity and contact your state insurance department.</p> <p><input type="checkbox"/> I have chosen to provide LIMITED information at this time at shown below. For your protection, if there's any information you're not willing to give the agent, initial the box next to the category of information.</p> <p><input type="checkbox"/> (1) Age;</p> <p><input type="checkbox"/> (2) Annual income;</p> <p><input type="checkbox"/> (3) Financial situation and needs, including debts and other obligations;</p> <p><input type="checkbox"/> (4) Financial experience;</p> <p><input type="checkbox"/> (5) Insurance needs;</p> <p><input type="checkbox"/> (6) Financial objectives;</p> <p><input type="checkbox"/> (7) Intended use of the annuity;</p> <p><input type="checkbox"/> (8) Financial time horizon;</p> <p><input type="checkbox"/> (9) Existing assets or financial products, including investment, annuity and insurance holdings;</p> <p><input type="checkbox"/> (10) Liquidity needs;</p> <p><input type="checkbox"/> (11) Liquid net worth;</p> <p><input type="checkbox"/> (12) Risk tolerance, including but not limited to, willingness to accept features that are not guaranteed in the future;</p> <p><input type="checkbox"/> (13) Financial resources used to fund the annuity; and</p> <p><input type="checkbox"/> (14) Tax status.</p> <p><input type="checkbox"/> I <u>REFUSE</u> to provide <u>ANY</u> information at this time. By not providing this information, I understand I will lose important consumer protections.</p> <p>Client Signature</p> <p>_____</p> <p>Date</p> <p>_____</p> <p>Agent/Broker Signature</p> <p>_____</p> <p>Date</p> <p>_____</p>
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Consumer Decision to Purchase an Annuity NOT Based on a Recommendation

Do Not Sign This Form Unless You Have Read and Understand It.

The Insurance Commissioner Has Created This Form for Your Protection.

If You Have Questions That the Agent, Broker or Company Cannot Answer to Your Satisfaction, Contact the Department of Insurance at [contact info]

Why are you being given this form? You're buying a complex financial product -- an annuity. The agent, broker or company has a responsibility to learn about you, your financial situation, insurance needs, and financial objectives to recommend a product that is in your best interest.

If you sign this form, it means you know that you're buying an annuity even though the agent, broker or company didn't have enough information about you to know if this annuity is in your best interest. **You lose important protections if you buy an annuity when the agent, broker or insurer can't recommend it as in your best interest.**

An agent, broker, or insurance company representative is trained to understand the details of the products they sell and how the products fit your needs. **Your insurance commissioner recommends you only buy an annuity if the agent, broker or company has the information it needs to recommend the annuity to you as in your best interest.**

I acknowledge I am buying an annuity, but the agent, broker or company did **not** recommend I buy it. If I buy it without a recommendation, I understand I will lose important consumer protections.

Client Signature

Date

Agent/Broker Signature

Date

Additional Suggested Appendices/Templates	
CEJ	<p>Template for Disclosure to Consumer of Basis for Annuity Recommendation</p> <p>Why Am I Recommending This Annuity to You?</p> <p>Consumer Name ("You," "Your"): Agent/Insurer Rep Name ("I," "My," "Me"): Product Recommendation (Include Amount): Date of Recommendation:</p> <p>Why Are You Receiving This Form? You're buying a complex financial product -- an annuity. The agent, broker or company has a responsibility to learn about you, your financial situation, insurance needs, and financial objectives in order to recommend a product that is in your best interest.</p> <p>The purpose of this form is so I (the agent) can show you that I understand the most important things about your circumstances, your insurance needs and your financial goals. The form also is intended to make sure you understand and agree with my analysis of what's in your best interest and why I'm recommending this product to you.</p> <p>If you think anything in this form is wrong or incomplete, tell me. Don't sign the form unless you understand and agree with the information in it.</p> <p>Key Customer Profile Characteristics: The product recommendation is based on an analysis of the customer profile information you gave me or the company. The list below shows my assessment of the five (5) most important things about you that helped shape my recommendation. Other customer profile information may be important and necessary for a product recommendation – see "why this product type and specific product are in your best interest" sections, below.</p> <ol style="list-style-type: none"> 1. 2. 3. 4. 5. <p>What Are The Top Goals You Hope To Achieve By Buying an Annuity?</p> <ol style="list-style-type: none"> 1. 2. 3. <p>How Does An Annuity Meet Your Goals? Why is This <u>Type</u> of Product/Annuity is in Your Best Interest?</p> <ol style="list-style-type: none"> 1. 2.

	<p>3.</p> <p>How Does This Annuity Meet Your Goals? Why This <u>Specific</u> Product/Annuity is in Your Best Interest?</p> <p>1.</p> <p>2.</p> <p>3.</p> <p>Client Signature</p> <p>_____</p> <p>Date</p> <p>_____</p> <p>Agent/Broker Signature</p> <p>_____</p> <p>Date</p>
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Comments of the Center for Economic Justice
To the NAIC Life Insurance and Annuity (A) Committee
Regarding Proposed Revisions to the Annuity Suitability Model Regulation

November 26, 2019

The Center for Economic Justice offers the following comments on the proposed revisions to the November 5, 2019 exposure draft revisions to the NAIC Suitability in Annuity Transactions Model Regulation.

While we have significant disagreements with many of the decisions of the working group, we acknowledge and thank Director Froment and the working group members for the thorough and inclusive discussions and opportunity to present consumer views.

Our comments start with proposed consumer disclosures, followed by section-by-section comments.

Disclosures

We start our comments with proposed disclosures. Sadly, as is usually the case with consumer information and disclosures developed by NAIC working groups, the development of the Annuity Suitability model disclosures has been an afterthought. The working group has spent little time discussing the content or format of the disclosures, has not referenced the NAIC *Best Practices*, has not engaged in any consumer testing and has not discussed the purpose and intended outcomes of the disclosures.

More important, the working group has not analyzed whether any consumer disclosure in these areas can effectively empower consumers. While consumer testing might prove us wrong, we don't believe the proposed disclosure regarding refusal to provide consumer profile information or decision to purchase an annuity not based on a recommendation will deter bad practices by producers. We believe the proposed disclosures will serve as a liability shield for producers and insurers.

In support of this view, we refer the working group to a recent report by financial service regulators in Australia and the Netherlands entitled, "Disclosure: Why It Shouldn't Be the Default." Key findings of the report include:

Financial services disclosure has traditionally been assumed to inform us (as consumers), help us make 'good' financial decisions, and drive competition.

This report focuses on the real-world context in which disclosure operates. It shows that, and explains why, disclosure and warnings can be less effective than expected, or even

ineffective, in influencing consumer behaviour. In some instances it shows that disclosure and warnings can backfire, contributing to consumer harm.

The report is a joint publication by the Australian Securities and Investments Commission (ASIC) and the Dutch Authority for Financial Markets (AFM). Both of these regulators have, over a number of years, identified limitations to disclosure in their respective retail financial services markets.¹ Although the Australian and the Dutch financial markets and regulatory regimes differ, there is also much common ground.

Case studies in disclosure limitations

The report explores the limits of disclosure, using case studies from ASIC, the AFM and other relevant sources as evidence. These case studies are drawn from the full range of financial products and services in different financial markets, and include all forms of disclosure.

As the case studies are specific to products and contexts, the findings from each are not generalisable. However, together they show how overloaded the expectations on disclosure and consumers can be; and why firms providing mandatory information does not necessarily result in ‘informed consumers’ and often does not correlate with good consumer outcomes. Disclosure is necessary, but not sufficient.

Why? Because:

Disclosure does not solve the complexity in financial services markets

Disclosure cannot solve complexity that is inherent in products and processes. Simplifying disclosure, for example, does not reduce the underlying complexity in financial products and services. Nor does it ease the contextual and emotional dimensions of financial decision making, both at the point of purchase and over time.

Disclosure must compete for consumer attention

We are constantly saturated with competing attempts to capture our attention and influence our decisions. Many firms have the commercial opportunity and means to effectively attract, distract and influence us; but regulators, and the disclosures they mandate, generally do not. Firms can also work around or undermine disclosure requirements that, once set, are generally slow to change.

One size does not fit all – the effects of disclosure are different from person to person and situation to situation

Like other forms of regulation, mandated disclosure requirements are often ‘one size fits all’ interventions – yet people and contexts differ and shift. It is hard to predict the individual and context-specific differences in how we will behave, make decisions, and engage with and process information.

In the real world, disclosure can backfire in unexpected ways

At worst, disclosure creates unintended detrimental outcomes for some consumers – in effect contributing to consumer harm (e.g. by increasing rather than decreasing trust in conflicted advisers, and decreasing rather than increasing credit card repayments). Ongoing monitoring of disclosure is needed because of these unexpected effects.

A warning about warnings

There is emerging evidence from financial services regulators about the limitations of the effectiveness of warnings that firms have to display about the risks and features of certain products and services. There is, for instance, some evidence of the effectiveness of warnings on our understanding of the risks associated with products, and in encouraging us to avoid unsuitable or harmful products.

Warnings are not a cure-all for problems in financial

It makes no sense to create a “best interest” standard based on a producer’s collection and analysis of consumer profile information in order to make a recommendation that best meets the consumer’s needs only to permit recommendations based on incomplete – potentially significantly incomplete – consumer profile information or to permit a consumer to purchase a complex financial product against the, or in the absence of a, recommendation by a producer based upon the best interest analysis. The producer and insurer should simply be prohibited from selling an annuity in these circumstances. The potential harm to consumers from such prohibitions – that a consumer sufficiently knowledgeable about the complex annuities that no assistance or provision of only limited information is required will be forced to provide information to the producer– is dwarfed by the benefits to consumers of preventing bad sales and sales practices.

On the chance that the A Committee does not agree with CEJ’s view on this issue, we offer the following regarding the proposed disclosures. The development of the content, format and delivery mechanism for a consumer disclosure must start with the purpose or goal of the disclosure. What do we hope to accomplish?

Reviewing the draft disclosures, we would conclude that the goal is to protect producers and insurers from challenges to their practices and not to protect consumers. For example, the goal of the "refuse to provide information" disclosure should be to encourage consumers to provide the relevant consumer profile information by explaining why it is important and necessary, what consumer protections will be lost if not provided and to guard against a producer using the form simply to facilitate a sale. The proposed form will not accomplish any of these goals.

Further, the "refuse to provide info" disclosure should be two separate forms -- one for refusing to provide any or all information and a second form for a purchase not based on the producer's or insurer's recommendation. Purchasing a product not based on the insurer’s or producer’s recommendation is a distinct action from and unrelated to purchasing a product based on a recommendation developed using incomplete consumer profile information.

With the caveat that any of these forms should be consumer-tested, we suggest the following forms for refusal to provide any or all consumer profile information and decision to purchase an annuity not based on a recommendation.

Consumer Refusal to Provide Information Necessary for a Best Interest Recommendation

Do Not Sign This Form Unless You Have Read and Understand It.
The Insurance Commissioner Has Created This Form for Your Protection.

If You Have Questions That the Agent, Broker or Company Cannot Answer to Your Satisfaction, Contact the Department of Insurance at [contact info]

Why are you being given this form? You're buying a complex financial product -- an annuity. To recommend a product that's in your best interest and meets your needs, the agent, broker or company needs information about you, your financial situation, insurance needs, and financial objectives.

If you sign this form, it means you're refusing to give the agent, broker or company some or all of the information needed to decide if this annuity is in your best interest. **You lose important protections if you refuse to give the insurance agent, broker or company accurate and complete information.**

The agent is required to consider the categories of information listed below about your situation. **Your insurance commissioner recommends you provide this information before you buy an annuity.** If the agent discourages you from giving any of the information, don't buy the annuity and contact your state insurance department.

- ☐ **I have chosen to provide LIMITED information at this time at shown below.** For your protection, if there's any information you're not willing to give the agent, initial the box next to the category of information.
- | | |
|-------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> (1) Age; | <input type="checkbox"/> insurance holdings; |
| <input type="checkbox"/> (2) Annual income; | <input type="checkbox"/> (10) Liquidity needs; |
| <input type="checkbox"/> (3) Financial situation and needs, including debts and other obligations; | <input type="checkbox"/> (11) Liquid net worth; |
| <input type="checkbox"/> (4) Financial experience; | <input type="checkbox"/> (12) Risk tolerance, including but not limited to, willingness to accept features that are not guaranteed in the future; |
| <input type="checkbox"/> (5) Insurance needs; | <input type="checkbox"/> (13) Financial resources used to fund the annuity; and |
| <input type="checkbox"/> (6) Financial objectives; | <input type="checkbox"/> (14) Tax status. |
| <input type="checkbox"/> (7) Intended use of the annuity; | |
| <input type="checkbox"/> (8) Financial time horizon; | |
| <input type="checkbox"/> (9) Existing assets or financial products, including investment, annuity and | |
- ☐ I **REFUSE** to provide **ANY** information at this time. By not providing this information, I understand I will lose important consumer protections.

Client Signature

Agent/Broker Signature

Date

Date

Consumer Decision to Purchase an Annuity NOT Based on a Recommendation

Do Not Sign This Form Unless You Have Read and Understand It.
The Insurance Commissioner Has Created This Form for Your Protection.

If You Have Questions That the Agent, Broker or Company Cannot Answer to Your Satisfaction, Contact the Department of Insurance at [contact info]

Why are you being given this form? You're buying a complex financial product -- an annuity. The agent, broker or company has a responsibility to learn about you, your financial situation, insurance needs, and financial objectives to recommend a product that is in your best interest.

If you sign this form, it means you know that you're buying an annuity even though the agent, broker or company didn't have enough information about you to know if this annuity is in your best interest. **You lose important protections if you buy an annuity when the agent, broker or insurer can't recommend it as in your best interest.**

An agent, broker, or insurance company representative is trained to understand the details of the products they sell and how the products fit your needs. **Your insurance commissioner recommends you only buy an annuity if the agent, broker or company has the information it needs to recommend the annuity to you as in your best interest.**

I acknowledge I am buying an annuity but the agent, broker or company did **not** recommend I buy it. If I buy it without a recommendation, I understand I will lose important consumer protections.

Client Signature

Agent/Broker Signature

Date

Date

Regarding the Producer Relationship Disclosure Form, we suggest the following edits. We believe the suggested edits are self-explanatory. They focus on better explaining the distinction between insurance and non-insurance financial products, the requirement for different licenses to sell insurance and non-insurance financial products and how a consumer can check the license and history of the agent or broker.

The suggested edits also provide some context for the disclosure regarding the insurers for whom the agent may sell insurance products.

The suggested edits also revise the compensation disclosure to simplify the disclosure while making it more meaningful to a consumer. We have deleted the part about one-time or on-going relationship as this serves no particular purpose and will be confusing to a consumer. While a producer may consider the sale of an annuity to be a one-time transaction, the consumer will likely consider the purchase of an annuity contract as an on-going relationship.

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 # _____ My firm has been selling XX Years

You can view my record as an insurance agent by going to the Department of Insurance website:

I am / am not also licensed to sell securities. My securities license # is

You can check my record as a broker at BrokerCheck: <https://brokercheck.finra.org/>

CLIENT INFORMATION (“You”, “Your”)

First Name: _____ Last Name: _____

~~INSURANCE AUTHORIZATION~~ What Types of Products Can I Sell to You?

I am licensed and authorized to sell insurance products (shown in the table below with an “I”), including annuities in [State]. ~~in accordance with state laws~~ I need a separate license to sell non-insurance financial products (shown in the table below with an “N”). The table below shows what type of insurance and non-insurance financial products I’m licensed to sell (shown by an “X” next to the product. While the product that best meets your needs may be an insurance product, other non-insurance financial products may better meet your needs. I may not be authorized to sell or discuss these non-insurance products. I offer the following products:

- | | |
|------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
| <input type="checkbox"/> Fixed or Fixed Indexed Annuities <u>(I)</u> | <input type="checkbox"/> Mutual Funds <u>(N)</u> |
| <input type="checkbox"/> Variable Annuities <u>(I)</u> | <input type="checkbox"/> Stocks/Bonds <u>(N)</u> |
| <input type="checkbox"/> Life Insurance <u>(I)</u> | <input type="checkbox"/> Securities Options <u>(N)</u> |
| <input type="checkbox"/> Variable Life Insurance <u>(I)</u> | <input type="checkbox"/> Certificates of Deposit <u>(N)</u> s |
| <input type="checkbox"/> Other Relevant Securities, Insurance or Investments (Describe): _____ | |

Whose Insurance Products Can I Sell to You?

I may only sell insurance products from insurance companies that appoint me as their agent. The table below shows whether I am appointed by and can sell insurance products from one or many insurance companies. Insurers often have multiple insurance companies within the insurer group. While I may be able to sell insurance products from more than one company in the insurer group, if I can only sell products from that one insurer, that is shown below as “only one insurer.” I am authorized and contracted or appointed or have access to offer:

- ☐ Products from **ONLY ONE INSURER** or Insurance Holding Company Group
- ☐ 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~~

How I'm Paid for My Work

It is important for you to understand how I'm paid for my work because who pays me and how they pay me can affect the recommendations I make to you.

My Compensation Structure:

- ☐ You pay me by _____ Commissioned Transaction
- ☐ The insurance company pays me directly or indirectly by _____
- ☐ (An insurance company may pay me indirectly by paying another organization, like an Independent Marketing Organization, which then pays me for a sale.) An asset under management fee
- ☐ Other, please describe: _____

I am required to answer your questions about who pays me for my work, how I'm paid and if the amount I'm paid varies for different types of products I recommend for your purchase. If you feel I'm not providing the information you need about how I'm paid, contact the Department of Insurance at XXX XXX XXXX.

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

Agent/Broker Signature

Date

We strongly support a provision in the revised model regulation to require the producer to document to the consumer the basis for the recommendation. The basis for the recommendation must be memorialized in writing. Otherwise, there will be no accountability for the seller to ensure they provide an appropriate discussion, and little likelihood that the consumer will understand the disclosure if it is provided only orally. Best practice would be to provide it in writing and explain it orally.

Industry arguments for “flexibility” to provide only oral descriptions of the basis for the recommendation would be the loophole that eats the entire rule. If permitted at all, why wouldn’t an insurer or producer resort to oral-only since such an approach is not only easier but also makes enforcement of the provision essentially impossible?

To facilitate a written disclosure of the basis of the recommendation to the consumer, we offer the following template for producers and insurers to use, to be incorporated into the model as an appendix.

Template for Disclosure to Consumer of Basis for Annuity Recommendation

Why Am I Recommending This Annuity to You?

Consumer Name (“You,” “Your”):

Agent/Insurer Rep Name (“I,” “My,” “Me”):

Product Recommendation (Include Amount):

Date of Recommendation:

Why Are You Receiving This Form? You're buying a complex financial product -- an annuity. The agent, broker or company has a responsibility to learn about you, your financial situation, insurance needs, and financial objectives in order to recommend a product that is in your best interest.

The purpose of this form is so I (the agent) can show you that I understand the most important things about your circumstances, your insurance needs and your financial goals. The form also is intended to make sure you understand and agree with my analysis of what's in your best interest and why I'm recommending this product to you.

If you think anything in this form is wrong or incomplete, tell me. Don't sign the form unless you understand and agree with the information in it.

Key Customer Profile Characteristics: The product recommendation is based on an analysis of the customer profile information you gave me or the company. The list below shows my assessment of the five (5) most important things about you that helped shape my recommendation. Other customer profile information may be important and necessary for a product recommendation – see “why this product type and specific product are in your best interest” sections, below.

- 1.
- 2.
- 3.
- 4.
- 5.

What Are The Top Goals You Hope To Achieve By Buying an Annuity?

- 1.
- 2.
- 3.

How Does An Annuity Meet Your Goals? Why is This Type of Product/Annuity is in Your Best Interest?

- 1.
- 2.
- 3.

How Does This Annuity Meet Your Goals? Why This Specific Product/Annuity is in Your Best Interest?

- 1.
- 2.
- 3.

Client Signature

Agent/Broker Signature

Date

Date

Section by Section Comments

Section 1. While “producer” is later defined to include an insurer where no producer is involved, it would be useful to include in section one either “or insurer where no producer is involved” or “as defined in this regulation” to make clear that producer has a broader meaning than would commonly be understood.

The drafting note in Section 1 claims that the revised model regulation “is a successor regulation that exceeds the requirements of the 2010 model regulation.” It is unclear that this claim is true. While the regulation claims a best interest standard of care, the actual care obligation remains the same – a reasonable basis for the produce to believe. The proposed treatment of material conflict of interest weakens the current rule because the new provisions eliminate any liability for material conflicts of interest. Egregious conflicts of interest that may have triggered regulatory action under the current rule are now permitted under the proposed rule as long as there is disclosure. The proposed safe harbor provisions also appear to weaken the rule by permitting a producer to forum shop for the most favorable regulatory framework. The proposed disclosures provide new liability shields for producers that don’t exist under the current rule.

The model should be extended to investment-type life insurance products. The model cannot credibly be called a best interest standard of care when it really means the best available annuity. Further, it makes no sense for a “best interest” standard of care for fixed indexed annuities, but no such standard of care for indexed universal life insurance despite the fact that investment type life insurance products and annuities typically offer the same type of investment benefits, are sold in similar manners with illustrations and are sold by the same licensed insurance producers. Failing to include life insurance in the revised model creates an un-level playing field for similar types of insurance products.

Section 2. The wording “recommendation to purchase, exchange or replace an annuity” is replaced by “any sale or recommendation of an annuity.” This new wording is inconsistent with the new wording in section 1 which refers to producers acting in the best interest of consumers when making a recommendation of an annuity. Further, the new language may exclude exchanges by only referencing sales or recommendations of an annuity.

The basis for the recommendation must be memorialized in writing to the consumer. Otherwise, there will be no accountability for the seller to ensure they provide an appropriate discussion, and little likelihood that the investor will understand the disclosure if it is provided only orally. Best practice would be to provide it in writing and explain it orally.

Industry arguments for “flexibility” to provide only oral descriptions of the basis for the recommendation would be the loophole that eats the entire rule. If permitted at all, why wouldn’t an insurer or producer resort to oral-only since such an approach is not only easier but also makes enforcement of the provision essentially impossible?

Section 3.I. After a sturdy definition of material conflict of interest in part 1, part 2 nullifies the definition by excluding cash and non-cash compensation. Given that cash and non-cash compensation comprise the universe of compensation, this definition weakens the current rule by eliminating the principal source of material conflicts of interest – the types and structure of compensation. The exclusion of compensation from material conflict of interest is particularly bizarre given that almost all of the sales abuses associated with life insurance and annuities over the past several decades can be tied to compensation structures that incentivize sales over the consumer's interest.

Section 3.M. Part 1 is an improvement over the current definition of recommendation. Part 2 is also useful up to the last few words “or other product and sales material.” This language would permit an illustration for a specific product to be excluded from the definition of recommendation, allowing a producer to prepare an illustration for a particular annuity, present the illustration to the consumer without making a “recommendation” and then permit the consumer to purchase the illustrated product without a recommendation, as permitted by Section 6.B.

The definition of recommendation refers to purchase, exchange or replacement. While the model has a definition for replacement, there is no definition for exchange. We suggest that, just as a definition of replacement is needed, so is a definition for exchange.

Section 6A: The definition of “best interest” fails to identify the outcome for the consumer. Rather, best interest of the consumer is defined as carrying out certain procedures. The only reference in these procedures to a good consumer outcome is in 6.A.1.(a).(iii) which requires the producer to “have a reasonable basis to believe the recommended option effectively addresses the consumer's” needs. Having such a “reasonable basis” is a far cry from acting in the consumer's best interest.

We have previously commented that a best interest standard should be defined as a recommendation for a product or products that best meets the consumer's needs without consideration of the producer's interest. The current language sets up an impossible balancing test of the consumer's and producer's interest.

Section 6.A.1.(a).(ii) requires the producer to “understand the available recommendation options after making a reasonable inquiry into options available to the producer.” This provision appears to be circular reasoning – a producer inquiring into the options available to the producer. It is unclear what such an inquiry might look like – “Let me inquire of myself what products I'm permitted to sell?”

This provision, along with other provisions in the model limiting the producer's responsibility to only those products they sell (such as 6.A.1.(c)) – even if they sell only a single product – points to a fundamental problem with model regulation. The producer is tasked with being a financial adviser by virtue of collecting and analyzing consumer profile information to provide a “best interest” recommendation. Yet, insurance producers are not required by the model to be knowledgeable about other products that would better meet the consumer's needs. The model cannot credibly be called a best interest standard of care when it really means the best available annuity.

The care obligation in Section 6.A.1 has 11 subparts, four of which limit or exclude certain responsibilities for the producer.

While the revised model contains much more detail on the care obligation than the current model, the standard of care has not been upgraded. The current model requires the producer to have reasonable grounds to believe the recommendation is suitable, while the revised model also requires the producer to have a reasonable basis to believe the recommendation meets the consumer's needs. Neither current nor proposed is a best interest standard of care. In effect, the revised model is simply repackaging suitability as best interest without a material upgrade in the standard of care.

Section 6.A.(2). Part (a) requires disclosure of the Producer Relationship Disclosure Form – but not until at the time of the recommendation or sale. This timing of delivery defeats the purpose of the disclosure, which is to educate the consumer about the producer, give the consumer an opportunity to research the history and performance of the producer, learn about the products the producer can offer and learn about the types and methods of compensation received by the consumer. All of this information is necessary for a consumer to determine whether to do business with the producer and should be provided prior to the consumer providing consumer profile information and receiving a recommendation or making a purchase. The proposed timing of this disclosure ensures the disclosure will fail to empower the consumer while serving as a liability shield for the producer. The proposed timing of delivery is simply inexplicable. This form should be provided to the consumer prior to the consumer giving consumer profile information to the producer.

Our proposed edits to the Producer Relationship Disclosure Form do a better job of operationalizing the requirements of part (a) than the exposed form.

While the care obligation requires the producer to communicate the basis or bases of the recommendation to the consumer, the disclosure obligation fails to include any provision for such communication. Instead Section 6.A.(2).(c) – in the disclosure obligation section – is a care obligation requirement for the producer to have a reasonable basis to believe the consumer is informed of the product features. This provision should be moved to the care obligation section and replaced with an affirmative responsibility for the producer to disclose in writing the basis for the recommendation. We have provided a template for such written disclosure to be included in the model.

Section 6.A.(3) This section has been rendered meaningless and useless by exclusion of cash and non-cash compensation from the definition of material conflict of interest. Putting aside the fact that material conflicts of interest no longer exist by virtue of the definition, the treatment of material conflicts of interest is faux regulation at its worst. No matter how severe the material conflict of interest, the model requires only that a producer “reasonably manage and disclose” said conflict. As we have noted in prior comments, there is no evidence that disclosure empowers a consumer sufficiently to discipline a producer’s conflict of interest.

This section, combined with the definition of material conflict of interest weaken the current model by shielding practices that would invite regulatory scrutiny and action today – shielded simply by disclosure.

Section 6.A.(4). We have provided proposed forms for the two situations – consumer refusal to provide information and consumer purchase of an annuity not based on a recommendation – above. Our proposed forms better operationalize the provisions in this section.

Section 6.A.(5) This section should be part of 6.A. and not a separately titled “application of best interest standard.” Further, the word “individualized” should be removed before recommendation. The definition of recommendation already includes advice given to an individual consumer. At best, “individualized recommendation” is redundant. More likely, however, is that the term will create confusion because it is not used elsewhere in the model and is not defined. The addition of “individualized” before recommendation implies something different from just recommendation and such an interpretation would lead to confusion.

The qualifier “directly” before compensation is also vague and confusing and we suggest the following: “and has ~~directly~~ received compensation as a result of the recommendation or sale” These edits address the problem of interpreting what “directly receiving” compensation means by explicitly tying the compensation to the recommendation or sale of the annuity.

Section 6.C. We note that in part (2)(h) of this section on the insurer’s supervision system, the insurer is required to eliminate certain types of compensation, presumably because these types of compensation create material conflicts of interest for the producer which would compromise a best interest or suitability standard of care. This section, while important, is inadequate to address compensation-related material conflicts of interest and conflicts with the definition of material conflict of interest and the standard of care regarding material conflict of interest.

This section recognizes that insurers are responsible for establishing compensation structures for producers. Consistent with this reality, we suggest the supervision system section include a requirement for the insurer (or an intermediary) to provide the producer with a description of the producer’s compensation which the producer can provide to the consumer consistent with the requirements for the producer to disclose compensation to the consumer.

The section on supervision includes a requirement to identify and address “potentially suspicious” consumer refusals to provide information. “Potentially” should be deleted. A pattern of consumer refusals is either suspicious or not. “Potentially suspicious” is not a meaningful combination of words.

While this section requires the insurer to look out for suspicious patterns of consumer refusal to provide information, it does not include a requirement for an insurer to identify and address suspicious patterns of recommendations. In fact, part C(4)(b) excuses the insurer from such oversight by relieving the insurer’s system of supervision from including “consideration of or comparison to options available to the producer” other than products offered by the insurer.

We suggest the deletion of C(4)(b) and the addition of a requirement for the insurer to identify and address suspicious patterns of recommendations.

Section 6.E. Part (1) of this Safe Harbor section provides a safe harbor for compliance with a comparable standard “regardless of whether the particular recommendation or sale is required to otherwise comply with such comparable standard.” The effect of this provision is to allow a producer to forum shop for the most favorable standard instead of the narrower purpose of a safe harbor to permit compliance with the suitability model requirements by virtue of having to comply with a comparable standard of care. This offending language must be removed.

This section includes a vague definition of comparable standard: “With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest and any amendments or successor regulations thereto” FINRA currently has suitability requirements that apply to sales of variable annuities. Presumably, a suitability requirement is not comparable to a best interest requirement. Yet, this language includes “and supervision of annuity recommendations and sales” which might reasonably be understood to include a suitability rule regarding recommendations and sales of annuities. Such an outcome seems inconsistent with the intent of the safe harbor for comparable standards.



November 26, 2019

SUBMITTED ELECTRONICALLY: jmatthew@naic.org

NAIC A Committee

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RE: NAIC Suitability in Annuity Transactions Model Regulation – 11/5/19 Exposure Draft

Dear Members of the NAIC A Committee:

The Fixed Annuity Consumer Choice Campaign (FACC) appreciates the opportunity to comment on the November 5, 2019 draft of the Suitability in Annuity Transactions Model Regulation which was developed by the Annuity Suitability Working Group and forwarded to A Committee for further consideration. Overall we believe the draft regulation has made significant progress towards becoming a more objective and workable regulation though we believe further improvement is possible.

As many of you know, the primary interest of FACC is ensuring any revisions to the model regulation adopting a best interest standard will ultimately be workable for the independent distribution channel consisting of insurance agents, marketing organizations, and carriers who offer fixed annuities to American consumers. We believe this is essential to ensure consumers continue to have the widest array of options available for retirement savings services and products and also avoid unnecessary disruption in the financial services marketplace to the detriment of independent producers.

We commented extensively on prior drafts of this regulation as it has evolved over the past couple years and, while we still have reservations along the lines described in those prior comment letters, we appreciate the proposed regulation is improved and headed closer to adoption by the NAIC. In this letter we wish to offer targeted suggestions to clarify certain critical points for independent producers and also comment more generally on a few seemingly open issues. Most importantly, we wish to put forward our proposed clarifications for Section 6A which we believe will make the regulation more practical and palatable for independent distribution.

Fixed Annuity Consumer Choice Campaign, or FACC, is an alliance of insurance agents, independent marketing organizations, insurers, and industry advocates seeking to protect the availability of fixed annuities by ensuring regulators work to align any new regulations with the fixed annuity independent agency system.



PROPOSED CLARIFICATIONS

FACC is asking the A Committee to consider and adopt certain clarifications to Section 6A which we believe reflect established intent but should be made explicit to avoid any uncertainty on matters of importance to independent distribution.

One point of clarification states agents would not need to obtain any securities license or other professional licensure merely to satisfy requirements of this regulation. The other point of clarification states that producers, who are obligated under this regulation to consider the types of products they are authorized and licensed to sell, correspondingly would be held to standards applicable to producers with similar authority and licensure. These revisions are reflected in the attached red-lined proposal for Section 6A.

FACC believes it is important to clarify agents do not need to obtain any securities license in order to comply with these new regulatory requirements given the broad scope of the requisite consumer profile and overall thrust of this regulation to harmonize with securities law. This clarification is essential to ensure consumers continue having access to all financial professionals and, specifically, to independent insurance professionals. Of course producers who actually engage in selling securities or giving investment advice would be required to get securities licensed which is also clarified in the proposal.

FACC also believes it is important producers know under this regulation they will be compared to other professionals with similar authority and licensure. In talking with members of the working group, FACC affirmed these clarifications are consistent with the intent of the rule, borne out as well by comments made during working group deliberations, but it was also recognized that explicit language would help remove any lingering uncertainty.

We are hopeful the A Committee will adopt these points of clarification so all independent producers can rest assured this indeed is the intent of the regulation and be assured this is how the regulation will be enforced. This will help preserve the strength of the marketplace as these new standards and requirements come into effect.

OTHER OUTSTANDING ISSUES

FACC also wishes to submit comments on a couple other issues which we understand may still be open for further consideration. Our impression from the final meeting of the working group was that these issues would receive additional attention at A Committee.

Safe Harbor

We had raised questions with the working group about the rationale for any safe harbor which exempts securities brokers from requirements of the best interest regulation and now has been expanded to exempt other financial professionals including investment advisers and ERISA fiduciaries. We remain unclear why any safe harbor is needed, whether it will cause an unlevel playing field, and whether in the end it will create a loophole from important consumer protections. We think the A Committee should reconsider the premise underlying the safe harbor.



The exemption in the current suitability model regulation is a vestige from a different time period when suitability standards and supervisory procedures established by FINRA for brokers and their representatives were considered more advanced. Insurance suitability then was considered redundant relative to securities brokers and variable products. Today that no longer is the case as insurance regulation has caught up with and in some ways surpassed securities regulation. Today insurance regulators have established unique criteria for what is considered suitable with respect to annuity sales, what is considered in the best interest of consumers, and what is expected of insurers for supervision.

Certainly it is appropriate to address any conflicts with securities law. However, we are not aware there is any conflict or inconsistency as between the NAIC model and SEC Reg BI especially given the attention to harmonization. Absent any actual conflict, typically both regulatory regimes apply, and regulated parties routinely comply with overlapping regimes. The NAIC Model Regulation concerning advertisements reflects this approach saying “(i)n variable contracts and other registered products where disclosure requirements are established pursuant to federal regulation, this regulation shall be interpreted so as to eliminate conflict with federal regulation.”

It is important to consider also that the proposed NAIC model regulation contains consumer protections not found in Reg BI. A few examples are:

1. The proposed NAIC model regulation requires risk tolerance include consideration of a client’s willingness to accept NGEs.
2. The NAIC model regulation imposes a “substantially benefit” standard to justify any replacement.
3. The NAIC model regulation requires producers to provide a reasonable estimate of compensation upon request of the consumer.
4. The NAIC model regulation requires producers to provide a standardized Relationship Disclosure Form to consumers.

Extending the safe harbor beyond securities brokers to investment advisers seems even more questionable. The investment advisory business is not subject to the same supervisory requirements as the broker industry nor regulated by an organization like FINRA. Stretching the safe harbor yet further to transactions “regardless of whether the particular recommendation or sale is required to otherwise comply with such comparable standard” looks like a potentially sizeable loophole though we are unclear exactly what it means. Even calling this provision a “safe harbor” – a term not presently used in the model suitability regulation – seems rather sweeping in giving a large percentage of producers the prerogative to ignore the NAIC model regulation.

We think these matters deserve closer scrutiny and we are hopeful that the A Committee will reconsider the safe harbor given the potential for creating an unlevel playing field and potentially compromising the consumer protections afforded by the regulation.



Harkin Amendment

We wish to express our concerns about the effect of any revisions to the NAIC model suitability regulation on the Harkin Amendment (“Harkin”), more formally known as Section 989J of the Dodd Frank Act. We think it is critical the NAIC account for implications of amending the model suitability regulation and only adopt amendments if there is a high degree of confidence the amendments will be adopted broadly by the states, thereby avoiding any diminution of protections afforded by Harkin.

Harkin was adopted by Congress to make clear that states regulate fixed products exclusively as long as those products are written out of the insurer’s general account, comply with nonforfeiture, and sold in compliance with the NAIC model suitability regulation. The Harkin provisions relating to compliance with the NAIC model suitability regulation are nuanced but contemplate that any change in the regulation must be adopted by states within five years in order to preserve the state’s exclusive jurisdiction over fixed products. If the NAIC adopts a successor model, a five-year clock begins anew, requiring states to adopt the model revisions or otherwise put the Harkin exemption at risk

The suitability working group never had a full public discussion about Harkin and instead referred the matter to the NAIC legal department. There seemed to be some question about whether the drafting note should characterize the revised regulation as a “successor” under Harkin but FACC believes that is inescapable regardless of what the drafting note says. Harkin refers to the “NAIC Suitability in Annuity Transactions Model Regulation (Model 275), and any successor thereto” so revisions to Model 275 *ipso facto* constitute a successor.

FACC believes (and always has) that Harkin issues might be avoided if the NAIC would extract any new provisions and move them to a separate regulation compatible with – but different from – the suitability regulation. However, at this stage, we presume that is not likely and so it is vital that NAIC leaders be mindful of potential ramifications of adopting a “successor” regulation. While 5 years may seem a long time, in some states these changes may require legislation, and in either case changes in law can sometimes hit unexpected roadblocks. Also there is no telling whether states will adopt the NAIC model as is or adopt permutations. These could all be factors in determining whether Harkin protections of state sovereignty over fixed products remain intact.

In conclusion, subject to addressing the above concerns, FACC believes this latest exposure draft represents progress towards a workable regulation that enhances consumer protection while preserving choice and avoiding unnecessary disruption in the marketplace especially for independent producers. We will continue to monitor and comment as appropriate but FACC recognizes how far the proposal has come. We greatly appreciate the attention the Working Group members have given to our concerns and wish to acknowledge the leadership of A Committee Chair Ommen and Working Group Chair Froment in moving this initiative forward.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kim O'Brien'.

Kim O'Brien

SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

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Section 6. Duties of Insurers and Producers

- A. Best Interest Obligations. A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:
- (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.
 - (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. Producers shall be held to standards applicable to producers with similar authority and licensure.

- (d) The requirements under this subsection do not create a fiduciary obligation or relationship and only 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.

(k) Nothing in this regulation should be construed to require an insurance producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit, or negotiate insurance in this state, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this regulation; provided the producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.



November 27, 2019

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

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

Dear Commissioner Ommen:

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

The Draft Proposes a Comprehensive and Robust Regulatory Framework

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

- Exercise reasonable diligence, care, and skill to know a consumer's financial situation, insurance needs, and financial objectives and to collect a more extensive universe of consumer profile information than is required today;
- Believe that the product ultimately recommended effectively addresses the consumer's situation, needs, and objectives over the life of the product and in light of that individual's consumer profile information;

- Understand the recommendation options available to the producer and consider the types of products that address the consumer's financial situation, insurance needs, and financial objectives;
- Consider and evaluate an additional series of factors when recommending a transaction involving the exchange or replacement of an annuity;
- Provide a description of the scope and terms of the producer's relationship with the consumer and the role of the producer in the transaction;
- Disclose the types of relevant products the producer is authorized to sell and whether the producer offers the products of one insurer or multiple insurance companies;
- Describe the sources and types of compensation the producer would receive from the purchase of a particular annuity and describe how the customer can obtain additional and more detailed information about that compensation;
- Ensure that the consumer has received important information about the key features of the recommended annuity;
- Satisfy new annuity-specific continuing education requirements; and
- Perhaps most notably, make a written record of any annuity recommendation (including the basis for the recommendation) and communicate the basis for the recommendation to the consumer.

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

The “Best Interest” Standard of Care

Agent Concerns with Establishing Such a Standard

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

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

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

While the proposal sets forth with clarity what should be required of agents in the paragraphs that follow, the introductory text in Section 6(A) undermines that effort by also establishing a standard that is inherently abstract, nebulous, and subjective. Courts and other observers typically equate an obligation to act in one’s best interest with a fiduciary duty (an outcome the proposal seeks to avoid¹), but the draft offers no insight into what this standard actually means or how it differs from a fiduciary one. The addition of this amorphous standard would place agents in an untenable position because it is unclear what specific actions, steps, or compliance measures it would require and what behavior it would prohibit. Most elements of the draft recognize that insurance producers must know what their specific regulatory obligations are, but the Section 6(A) text takes a very different approach.

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

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

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

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

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

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

Responses to Arguments Made in Defense of the Best Interest Standard

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

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

- First, although some view paragraphs (1)-(4) as offering a *definition* of what it means to act in a person's best interest, the reality is that those provisions operate as a *safe harbor*. This distinction is important. The introductory text in Section 6(A) expressly and unequivocally establishes the duty to act in one's best interest, and the provision includes a safe harbor that extinguishes the obligation and deems it to have been satisfied if a producer satisfies the care, disclosure, and other requirements set forth in paragraphs (1)-(4). One result of this framework is that agents who make inadvertent and inconsequential errors in their efforts to satisfy the requirements of paragraphs (1)-(4) may be unable to take advantage of the safe harbor and will be subjected instead to the undefined and unclear parameters of the fiduciary duty-like best interest standard.
- Second, even if paragraphs (1)-(4) are intended to provide a definition for the best interest standard, the result is an interpretation of the standard that differs dramatically from its commonly accepted connotation. Those who suggest that the proposal offers a definition for the term are effectively saying that the best interest standard should not be of concern to the agent community because it has been defined in a manner that defies and is inconsistent with its widely understood meaning. This offers little comfort, and we fear that courts and regulators will inevitably interpret the phrase as it has been for decades.
- Third, those who suggest that the proposal defines the parameters of the best interest standard essentially argue that the focus should be on the substantive requirements that are set forth in paragraphs (1)-(4) and that the introductory text found in Section 6(A) imposes no additional mandates. This argument observes that the provision is extraneous and provides no substantive benefit of its own. Our concern with this suggestion is that words have meaning, and courts attempt to give effect to all statutory and regulatory provisions and avoid outcomes where clauses are ignored or overlooked. This canon of statutory interpretation – the rule against surplusage – assumes that lawmakers do not include unnecessary and redundant elements in the law and directs courts to give effect to each provision. Since the most critical and operational aspects of this proposal are included in paragraphs (1)-(4) and can stand on their own, there is no reason to additionally include the introductory text in Section 6(A). The text is superfluous and unnecessary, and it should be deleted in order to avoid having courts give it some additional meaning and effect.

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

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

IIABA Recommendations

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

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

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

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

Other Issues

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

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

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

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

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

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

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

Section 6(E) – Safe Harbor

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

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

Appendix A – Producer Relationship Disclosure Form

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

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

- Title – Referring to this form as the “Producer Relationship Disclosure Form” is likely to leave consumers with the mistaken impression that it applies to all transactions performed by and all interactions with a producer. It would be helpful to indicate that the form applies narrowly to the particular annuity transaction in question (and not to any other past or future insurance transactions with the agent). One possible alternative is to refer to this as the “Annuity Transaction Disclosure Form: Producer Summary.”
- Firm Name – The “Firm Name” field should be replaced with “Business Entity Name” to mirror the terminology used by insurance producers and their regulators.
- Insurance License # – An individual producer can have dozens of separate insurance license numbers, and we encourage the committee to replace this field with a more clearly defined identifier. Specifically, we recommend that this field ask for a producer’s “Home State Insurance License Number” or “National Producer Number (NPN).”
- Insurance Authorization – This field would have a producer disclose the types of products that are available from that individual, but the only insurance products mentioned are annuity and life insurance products. We wonder whether the use of the current version of this form will create confusion if that same producer provides the customer with property-casualty, health, or other insurance coverages. As noted previously, it may be helpful to convey that this form is intended to address and apply to annuity transactions only and is not intended to apply to the producer’s offering of other products.
- My Relationship with You – This field presents two options and would require an agent to select “One-Time Transaction” or “On-Going Relationship.” It is unclear which option an agent should select and what relevant information this is intended to convey, and we worry this will produce confusing and inaccurate impressions. We also wonder how a multi-line

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

- My Compensation Structure – We encourage the committee to revise this field to more clearly indicate that it is providing information about the producer’s compensation in connection with the particular annuity (and not other products or transactions). The committee might also consider consolidating and simplifying the compensation structure and compensation sources fields.
- I am likely to be compensated by the following sources for this relationship – Again, IIABA believes it is critically important for the form to be transaction-specific and to not convey inaccurate information about the producer. Accordingly, we recommend replacing the word “relationship” with “annuity transaction.” We also recommend that the phrase “The consumer” be replaced with “You” or “Fees paid by you.”

Regulators Likely Lack the Authority to Act Unilaterally

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

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

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

We can think of no comparable NAIC proposal that has taken the form of a model regulation in the past, and, in particular, we are unaware of any past attempts by the NAIC to alter longstanding common law standards of care in the manner that has been proposed. It is also notable that very similar proposals adopted by the NAIC (including the producer compensation disclosure provisions approved in 2005⁵) have taken the form of model acts and have recognized the need for express legislative authorization. If the NAIC and individual regulators are able to act unilaterally and implement all of the elements of the proposal without such authorization, then it would suggest that there are no limitations on the ability of insurance departments to impose new requirements and alter existing law.

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

⁵ NAIC Producer Licensing Model Act, Section 18.

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

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

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

Conclusion

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

Very truly yours,



Wesley Bissett
Senior Counsel, Government Affairs

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

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

Section 6. Duties of Insurers and Producers

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

or

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

[. . .]

(2) Disclosure Obligation

(a) Prior to or at the time of the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to the "Producer Relationship Disclosure Form" in Appendix A:

[. . .]

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

[. . .]

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

C. Supervision System

[. . .]

(2) An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with this regulation, including, but not limited to, the following:

[. . .]

~~(h) — The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subparagraph are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as these benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and~~

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

Section 1. Purpose

- A. The purpose of this regulation is to require producers to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed.
- B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation or to subject an insurance producer to civil liability under the best interest standard of care outlined in Section 6 or under standards governing the conduct of a fiduciary or a fiduciary relationship.

Section 6. Duties of Insurers and Producers

- A.
 - (1)
 - (d) The requirements under this subsection do not create a duty of loyalty or a fiduciary obligation or relationship and only create a regulatory obligation as established under this regulation.

Section 8 Compliance Mitigation; Penalties; Enforcement

- A. An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its producer, the commissioner may order:
 - (1) An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this regulation by the insurer, an entity contracted to perform the insurer's supervisory duties or by the producer;
 - (2) A general agency, independent agency or the producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of this regulation; and
 - (3) Appropriate penalties and sanctions.
- B. Any applicable penalty under [insert statutory citation] for a violation of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.
- C. The authority to enforce compliance with this regulation is vested exclusively with the commissioner.

Andrew J. Bowden
Senior Vice President
General Counsel

1 Corporate Way
Lansing, MI 48951
Phone: 517/702-2480
Fax: 517/702-2445
andrew.bowden@jackson.com

November 26, 2019

The Honorable Doug Ommen
Commissioner
Iowa Insurance Division
601 Locust Street, Fourth Floor
Des Moines, Iowa 50309
Via e-mail to Ms. Jolie Matthews (jmatthews@naic.org)

Re: Comments on the November 5, 2019, Draft Revisions to the Suitability in Annuity Transactions Model Regulation ("Model Regulation")

Dear Commissioner Ommen:

Thanks to you and the other members of the Annuity Suitability (A) Working Group for your careful consideration of suggested revisions to the Model Regulation and for the opportunity to comment prior to consideration of the exposed draft by the Life Insurance and Annuities (A) Committee. We are grateful for the time and effort expended, and courtesies extended, inside and outside of Working Group meetings in an attempt to get it right. We would especially like to thank Director Froment for her capable, even-handed, and often humorous leadership of the Working Group throughout the drafting process.

Jackson National Life Insurance Company¹ supports efforts to enhance the standards that apply to recommendations of annuities by insurance producers. We are therefore supportive of the extension of the existing FINRA safe harbor to additionally include recommendations subject to specified and recognized fiduciary regulatory regimes.

Although Jackson National previously proposed an amendment to the safe harbor that is different than the one presently under consideration, we support and recommend the language in the exposed draft. It is consistent with the logic of the existing FINRA safe harbor and will not adversely affect consumer protection standards. In drafting the existing safe harbor, regulators recognized that individuals subject to separate, but equivalent, standards of care and conduct should not have to comply with both standards.

¹ Jackson National Life Insurance Company (Jackson) is the largest provider of individual annuities in the United States since 2012.¹ Jackson and its U.S. affiliates manage more than \$200 billion in fixed and variable annuities for over 1.5 million investors. Jackson's insurance products are offered by more than 150,000 financial advisers affiliated with more than 600 independent broker-dealers, wirehouses, financial institutions and independent insurance agents. Thus, Jackson has a unique perspective as a leading manufacturer of annuity products.



Commissioner Doug Ommen
November 26, 2019
Page 2

Certainly, sales made in compliance with specified and recognized fiduciary regulatory regimes should be deemed to satisfy the requirements of the Model Regulation. Investment advisers registered under federal securities laws (or equivalent state securities laws) are subject not only to the highest standards of care and conduct but also to extensive disclosure, conflict mitigation, and supervisory requirements.

Requiring redundant application of fiduciary regulations and the Model Regulation will only serve to deter fiduciaries from offering annuities and defeat the objective of increasing consumer protection standards.

There is No Foreseeable Risk to Expanding the Safe Harbor

By its terms, the safe harbor would not be available if a recommendation is not subject to, or fails to comply with, a specified and recognized fiduciary regime, such as the Investment Advisers Act of 1940. In such instance, all the requirements of the Model Regulation must be satisfied. Thus, in no instance will a recommendation of an annuity be subject to a standard lesser than that contained in the Model Regulation.

Finally, the proposed amendment of the safe harbor does not affect state insurance departments' investigative or enforcement powers. State insurance regulators expressly retain their ability to investigate and enforce the Model Regulation. They will also retain their power to investigate and enforce the consumer protection provisions within their insurance codes, as well as the securities anti-fraud statutes that govern the sale of variable annuities insofar as they regulate variable annuities as securities, as most states do.

Conclusion

Thank you for the opportunity to share our views and for your consideration of them. We hope this letter is helpful and are happy to answer any questions or to provide additional information.

Very truly yours,

Andrew J. Bowden
Senior Vice President and General Counsel



November 26, 2019

Submitted Electronically to jmatthews@naic.org

The Honorable Doug Ommen
Commissioner, Iowa Insurance Division
Chair, NAIC Life Insurance and Annuities (A) Committee
Two Ruan Center
601 Locust, 4th Floor
Des Moines, IA 50309-3738

Subject: Request for Comments on the 11-5-19 Draft of Proposed Revisions to the Suitability in Annuity Transactions Model Regulation

Dear Commissioner Ommen:

These comments are submitted to the National Association of Insurance Commissioners (NAIC) Life Insurance and Annuities (A) Committee ((A) Committee) on behalf of the undersigned trade groups in response to the request for comments on the 11-5-19 draft of proposed revisions to the Suitability in Annuity Transactions Model Regulation (Model Regulation).

The undersigned and our members believe the Model Regulation, as proposed to be revised in the 11-5-19 draft, will make it possible for consumers – regardless of where they live – to be confident that insurance companies and producers with whom they are entrusting their retirement savings are acting in their best interest, and not putting their own financial interests ahead of consumers' interests.

Accordingly, the undersigned support the Model Regulation, as proposed to be revised in the 11-5-19 draft, including: (i) the new drafting note at the end of Section 1, that underscores the revised Model Regulation's status as a successor regulation that exceeds the requirements of the 2010 Model Regulation for purposes of the Dodd-Frank Act; and (ii) the new safe harbor language in Section 6.E., that extends the current safe harbor to registered investment advisors, in alignment with the SEC's Regulation Best Interest initiatives.

The undersigned remain committed to achieving a harmonized, national best interest standard of care for annuities and securities across all regulatory platforms. We appreciate the NAIC's ongoing efforts to achieve such harmonization as reflected in the 11-5-19 draft. We commend the Annuity Suitability Working Group for drafting enhancements to the Model Regulation that provide clear, objective best interest standards for recommendations of annuities that align well with the SEC's Regulation Best Interest. Together, these two

initiatives will significantly enhance protections for consumers across the country who seek guaranteed lifetime income in retirement through annuities and securities.

The undersigned suggest two important technical clarifications to 11-5-19 draft:

(i) Section 6.C.(2)(e)

To clarify and provide further guidance to insurers as to their obligations under Section 6.C.(2)(e), we suggest modification to this provision to read as follows (NAIC's proposed revisions are in red; the undersigned's proposed revisions are in blue):

The insurer shall establish and maintain reasonable procedures to detect recommendations that are not ~~suitable in compliance with subsections A, B, D and E.~~ This may include, but is not limited to, confirmation of the consumer's ~~suitability~~ consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations, 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 ~~suitability~~ consumer profile information or other required information under this section after issuance or delivery of the annuity; ~~and~~

(ii) Appendix A – Producer Relationship Disclosure Form – Insurance Authorization

To avoid unnecessary confusion as to producers' obligations under the Model Regulation, we suggest addition of the following sentence at the end of the section titled "Insurance Authorization":

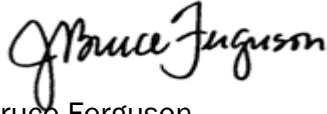
When I sell products other than insurance products, I am not engaging in my capacity as an insurance producer.

The undersigned trade groups urge the (A) Committee to vote to approve the 11-5-19 draft and to recommend its adoption by the full NAIC as expeditiously as possible. Final approval by the full NAIC as soon as possible will position us to work with the NAIC toward implementation of the enhanced revised Model Regulation in the states beginning in 2020.

We thank the (A) Committee for its continued consideration of our views and the NAIC for its continued efforts in connection with the proposed enhancements to the Model Regulation, which we believe constitute one of the NAIC's most important consumer protection initiatives.

Sincerely,

AMERICAN COUNCIL OF LIFE INSURERS
(ACLI)



Bruce Ferguson
Senior Vice President, State Relations

COMMITTEE OF ANNUITY INSURERS (CAI)



Susan Krawczyk
Partner

FINANCIAL SERVICES INSTITUTE, INC. (FSI)



David T. Bellaire, Esq.
Executive Vice President & General Counsel

ASSOCIATION FOR ADVANCED LIFE
UNDERWRITING (AALU)



Marc Cardin
President & CEO

INDEXED ANNUITY LEADERSHIP COUNCIL
(IALC)



Jim Poolman
Executive Director

INSURED RETIREMENT INSTITUTE (IRI)



Jason Berkowitz
Chief Legal & Regulatory Affairs Officer

NATIONAL ASSOCIATION FOR FIXED ANNUITIES
(NAFA)



Charles J. DiVincenzo, Jr.
President and CEO

NATIONAL ASSOCIATION OF INSURANCE AND
FINANCIAL ADVISORS (NAIFA)



Gary A. Sanders
Counsel and Vice President, Government
Relations

December 4, 2019

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

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

Dear Commissioner Ommen:

The Center for Economic Justice (CEJ)¹ and the Consumer Federation of America (CFA)² write to voice our strong opposition to a recent request from industry trade groups urging the Committee to adopt the latest draft revisions to the Suitability in Annuity Transactions Model Regulation at the upcoming Austin meeting.³ We do not believe the proposed revisions improve consumer protection from the current model regulation, nor do they represent what typical consumers would understand “best interest” to mean. On the contrary, if adopted as currently drafted, the proposal would do more harm than good by misleading consumers into expecting best interest recommendations that the standard does not deliver.

¹ The Center for Economic Justice is a non-profit organization that works to increase the availability, affordability and accessibility of insurance, credit, utilities, and other economic goods and services for low income and minority consumers. Birny Birnbaum, Director of CEJ, has been a designated consumer representative at the NAIC for nearly 20 years.

² [The Consumer Federation of America](#) is a nonprofit association of more than 250 consumer groups that was founded in 1968 to advance the consumer interest through research, advocacy, and education. Barbara Roper is Director of Investor Protection at CFA.

³ See, e.g., November 26 letter from American Council of Life Insurers, the Committee of Annuity Insurers, Financial Services Institute, Insured Retirement Institute, Indexed Annuity Leadership Council, National Association for Fixed Annuities, National Association of Insurance and Financial Advisors, and Association for Advanced Life Underwriting to the Honorable Doug Ommen, Chair, NAIC Life Insurance and Annuities (A) Committee, regarding the Request for Comments on the 11-5-19 Draft of Proposed Revisions to the Suitability in Annuity Transactions Model Regulation. (“The undersigned trade groups urge the (A) Committee to vote to approve the 11-5-19 draft and to recommend its adoption by the full NAIC as expeditiously as possible.”)

In its November 26 comment letter, CEJ detailed the current draft's many flaws, from ineffective disclosures, to inconsistent standards for comparable products, to overly broad safe harbors.⁴ While all are serious, we view the following as its most critical shortcomings:

- **The current draft does not impose a true best interest standard.** The current draft requires that the producer have a reasonable basis to believe the recommended annuity meets the consumer's needs. That is not a true best interest standard; it is simply a restatement of the obligation to make suitable recommendations.⁵ Calling it a best interest standard is misleading. Moreover, the standard is vague and full of loopholes.
- **The current draft does not rein in the most harmful and pervasive conflicts of interest.** The proposed standard excludes all forms of cash and non-cash compensation from the definition of material conflict of interest. As a result, compensation practices at the heart of a whole host of recent life insurance and annuity sales scandals would be preserved. The associated conflicts would not even have to be mitigated to minimize their harmful impact.
- **The current draft's ban on certain sales contests and incentives is too narrowly drafted to promote real reform.** The proposed ban on time-limited, product-specific sales contests and incentives appears, at first glance, to be a major step toward eliminating some of the most anti-consumer practices common in the industry today. However, closer scrutiny reveals that it is so narrowly drafted that its only effect will likely be to force insurers to redesign, rather than eliminate, such practices.
- **The current draft relies heavily on disclosures that are poorly designed and not provided at the appropriate time.** In a number of areas, the proposed standard is satisfied through disclosure, but the Committee has failed to test the proposed disclosures to ensure that they are effective. Moreover, because of the proposal's lax delivery requirements, key disclosures, such as the Producer Relationship Disclosure Form, are likely to come too late to benefit the consumer. As a result, the disclosures are likely to do more to shield insurers and producers from liability than to inform or protect consumers.

As a result of these and other serious shortcomings in the current draft, we see no basis for the claim that the revised model "exceeds the requirements" of the current model. Certainly, the Committee has failed to provide any analysis to support that claim. Such analysis and documentation is essential before the proposed revisions are adopted. In particular, the Committee should explain whether and how the requirement to ensure that a recommendation meets the needs of the consumer enhances the existing obligation to make suitable recommendations, how compensation-related conflicts will be prevented from undermining the standard, and to what extent sales contests and other problematic practices that are common in the industry today would be eliminated under the revised standard.

⁴ Comment of the Center for Economic Justice to the NAIC Life Insurance and Annuity (A) Committee regarding Proposed Revisions to the Annuity Suitability Model Regulation, Nov. 26, 2019.

⁵ We have described elsewhere what a true best interest standard would look like. See, e.g., November 26, 2019 CEJ Comment. See, also, January 22, 2018 letter from Consumer Federation of America to Jolie H. Matthews, Senior Health and Life Policy Counsel, National Association of Insurance Commissioners, <https://consumerfed.org/wp-content/uploads/2018/01/cfa-comment-letter-regarding-naic-best-interest-standard.pdf>.

In drawing up the revised model, the Committee has obviously drawn heavily on the Securities and Exchange Commission's recently adopted Regulation Best Interest (Reg BI), although the current draft remains considerably weaker than even that vague and ineffective SEC rule.⁶ It is a curious choice, in light of the fact that Reg BI was strongly opposed by investor advocates, is currently being challenged in court by several state attorneys general, and has been strongly criticized by state securities regulators, some of whom have gone so far as to propose stronger protections for their state residents.⁷ For the NAIC to adopt a further watered down version of this best interest standard in name only would be unconscionable.

Instead of approving the current draft, as industry groups have requested, we therefore urge the Committee to set aside time after the Austin meeting to give interested stakeholders an opportunity to explain – and for Committee members to discuss – the comments received on the draft revisions. That cannot be achieved in a 90-minute Committee A meeting packed with other agenda items. To move forward with a vote on the current draft without that more careful consideration would be a great disservice to the consumers state insurance regulators are pledged to protect.

Thank you for your attention to our concerns.

Sincerely



Birny Birnbaum
Executive Director
Center for Economic Justice



Barbara Roper
Director of Investor Protection
Consumer Federation of America

⁶ For example, Reg BI's care obligation includes an obligation, absent from the current NAIC model draft, to have a reasonable basis to believe the recommendation is in the investor's best interests. It also requires registered representatives' conflicts of interest and conflicts associated with a limited product menu to be mitigated, not just disclosed and managed. While key terms are undefined, including "best interest," the SEC standard at least gives lip service to these requirements and holds out the promise that they could be effectively enforced, if the Commission had the will to do so.

⁷ See, e.g., Mark Schoeff, Fiduciary Focus: Massachusetts advances fiduciary duty proposal; public hearing required prior to final rule, InvestmentNews, Dec. 2, 2019 <https://www.investmentnews.com/article/20191202/FREE/191209994/massachusetts-advances-fiduciary-duty-proposal-public-hearing>.

AGENDA ITEM #3a
Accelerated Underwriting (A) Working Group
Materials Pending

AGENDA ITEM #3b
Annuity Disclosure (A) Working Group
Summary Report

Conference Calls

ANNUITY DISCLOSURE (A) WORKING GROUP
December 2, 2019 / September 19, 2019

Summary Report

The Annuity Disclosure (A) Working Group met via conference call Dec. 2 and Sept 19, 2019. During these meetings, the Working Group:

1. Discussed outstanding issues and comments received on draft revisions to the *Annuity Disclosure Model Regulation* (#245):
 - a. Agreed that the algorithm should be made available to the insurance commissioner for review, with the inclusion of a drafting note that “states should consider whether to make the algorithm available to consumers upon request.”
 - b. Reconsidered revised language providing that the “... algorithm or other method of combining the indices shall be fixed from the creation of the index ...” without exception, and agreed to revised language to allow an exception for “changes made pursuant to the index provider’s established governance rules and procedures.”
 - c. Discussed language describing what kinds of combination indices should be permitted to be illustrated. Agreed to review alternative versions of revised language.
2. Agreed that the Working Group was sufficiently close to reaching consensus on revisions to Model #245 that it would ask the Life Insurance and Annuities (A) Committee for an extension of the Request for NAIC Model Law Development.

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Draft: 11/11/19

Annuity Disclosure (A) Working Group
Conference Call
Sept. 19, 2019

The Annuity Disclosure (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Sept. 19, 2019. The following Working Group members participated: Mike Yanacheak, Chair, and Tracy Swalwell (IA); Chris Struk (FL); Craig Van Aalst (KS); Nour Benchaaboun (MD); John Robinson (MN); Andrew Schallhorn (OK); Sarah Neil (RI); and Sandra Dodson and Lynn Pazdral (TX). Also participating were: Steve Ostlund and Jerry Workman (AL); Perry Kupferman (CA); Jason Lapham (CO); William Leung (MO); Bob Harkins (NE); Tom Kilcoyne (PA); and Lichiou Lee (WA).

1. Heard Opening Remarks

Mr. Yanacheak reminded the Working Group that it had last met July 29 via conference call, shortly before the Summer National Meeting. During that conference call, the Working Group considered outstanding issues remaining with revisions to the *Annuity Disclosure Model Regulation* (#245). Mr. Yanacheak summarized where the Working Group ended up on these issues. First, the Working Group settled on allowing the illustration of an index that has not been in existence for at least 15 years if certain criteria are met. Second, the Working Group agreed to require any algorithm or other method of combining the indices to be fixed from the creation of the index, without an exception for changes made pursuant to the index provider's corporate governance rules and procedures. Third, the Working Group agreed that there should be visual differentiation between indexed returns that are based on historical performance prior to the existence of the index and indexed returns that are based on historical performance thereafter.

Mr. Yanacheak said there are two remaining issues that he would like the Working Group to discuss and resolve. The first issue is whether to allow the illustration of indices made up of only other indices, or to allow the illustration of indices made up of indices or "other financial instruments." He explained that this issue was discussed during the Working Group's July conference call, but because there was no working understanding of what was meant by "other financial instruments," efforts to reach a real resolution were unsuccessful. Mr. Yanacheak explained that he had received feedback from state insurance regulators at the Summer National Meeting indicating that there needs to be a clear understanding of what is meant to be included in the index if it is more than an index made up of other indices. The second issue is whether the algorithm should be made available to the consumer for inspection, or is making it available to the insurance commissioner sufficient.

2. Discussed Availability of the Algorithm to Consumers

Mr. Yanacheak explained that over the past several years, there has been a discussion of the need for indices to be auditable. Many indices have straightforward rules that can be seen and understood and can be challenged if there is a disagreement as to what the closing value of an index is. He explained that some of the newer indices that this Working Group is charged with reviewing in the context of Model #245 are not widely used, and in some cases are only used in insurance products. He said this raises the question as to who has the ability to audit such an index and verify that the index is calculated correctly and the amount being credited to consumers is the correct amount. Mr. Yanacheak said there was a concern among state insurance regulators that if an insurance company is seeing a match between its hedging and the increase in it is having to fund, the insurance company would be satisfied as long as that was within its tolerances and may not feel the need to do a routine audit. Therefore, someone else needs to have that ability. He said the initial suggestion was to make the algorithm available to the insurance commissioner for review to audit the index that is being published to make sure it is accurate. He said there was also the suggestion that the algorithm should be made available to the consumer upon request.

Mr. Struk said he supports making the algorithm available to the insurance commissioner. Mr. Benchaaboun said Maryland also supports making the algorithm available to the insurance commissioner. He said Maryland has statutes and regulations that allow for the collection of documents in the context of market conduct exams, but he believes that in this context, it is important for the insurance commissioner to explicitly have access to this information for audit purposes. Robbie Meyer (American Council of Life Insurers—ACLI) said the ACLI supports making this information available to the insurance commissioner because, as Mr. Benchaaboun stated, there are multiple avenues under existing authority whereby the insurance commissioner could obtain this information. She said the ACLI has concerns about making this information broadly available to consumers upon request. Ms. Meyer said that while some rule books for some indices are in the public domain, the vast majority of rule books for custom indices are not in the public domain, and insurers have entered into licensing agreements that prohibit or limit the distribution of rule books because often the rule books contain intellectual property of the index provider.

She said the ACLI fully supports consumers understanding what they are purchasing through meaningful disclosure of the features and benefits. She said consumers can obtain information that is more meaningful than the algorithm from disclosures already required under other sections of Model #245. She said the ACLI would like to eliminate the reference to making the algorithm available to the consumer upon request.

Birny Birnbaum (Center for Economic Justice—CEJ) noted the contradiction in the ACLI argument that consumers should have disclosures so that they understand the product, but not have the right to see how actual changes to the index that determine the value of their product are made. He said it is necessary and reasonable to have access to methodology by which the value of an index changes so they can verify that the account value is an accurate calculation of the changes in the index. He said the CEJ thinks it is unrealistic to expect state insurance regulators to monitor and audit algorithms for a variety of insurers and products on a routine and timely basis. He said that is pretend consumer protection, not real consumer protection. He said there is no reason for the use of complex proprietary algorithms in fixed indexed annuities. Mr. Birnbaum said there is plenty of reasons why companies may want to use hedging programs that involve a variety of complex algorithms, but there is no reason for their use in indexes for fixed indexed annuities. He said the concept of using volatility-controlled indexes in a product that is structurally designed by itself to be a volatility-controlled device does not make sense. He said the idea that a licensing agreement somehow prevents disclosure to consumers is completely false. He said licensing agreements prevent use of the information for commercial purposes; they do not prevent the disclosure to a consumer to understand how the value of their product is determined. One example of the broader problem is allowing these data mined indexes to be used based on obscure and complex algorithms. This is destined to be a huge scandal for the industry and problem for state insurance regulators.

Ms. Neil said she shares some of Mr. Birnbaum's concerns. She said a history that only exists within a particular illustration is different from something public like the S&P 500, which can be researched. She said she is not convinced that consumers can understand an algorithm, and she does not want to disclose trade secrets, but the only choice for consumers should not be to take a company's word for it. She said it is important that consumers are able to independently verify information.

Ms. Meyer said the ACLI struggles with the breadth of this particular provision, which requires that "any algorithm or other method that is supporting such an index and is included in the illustration shall be made available" She said it is important for consumers to understand, but we need to be sure that disclosure is legal and that the information disclosed is meaningful. She said she supports retaining Section 6G(4)(b)(ii)(IV), which states that "[t]he consumer may request further explanation of the algorithm used to determine the weights." She said there are other existing requirements in Model #245 that also allow the consumer to get more detailed information about the product, including the disclosure document and the Buyer's Guide.

Mr. Birnbaum said a fundamental selling point for these products is their ability to accumulate assets over time. He said it is illogical not to share the method by which the accumulated value is calculated. He said it is inadequate disclosure to tell a consumer that a proprietary methodology is used and that it will periodically change. He said it is a false argument to assert that a licensing agreement prohibits insurers from providing basic information about a product to a consumer. Mr. Robinson proposed making the algorithm available to consumers if it is readily available. He explained that the reason is because if consumers ask to see the algorithm, and it is unavailable, that will factor into their purchasing decision. Consumers may decide if it cannot be explained to them, then they will not buy it. Mr. Struk said he likens purchasing this product to buying a mutual fund. He said a mutual fund may use an algorithm, but he would not share it with consumers because it is a proprietary investment method. Mr. Birnbaum said there is a difference between buying a security or a managed product where there is no guarantee, floor, cap or limit. He said buying an insurance product is different because there are guarantees made based on references to a specific index or indexes. Mr. Struk said he sees a similarity between the algorithm and the fund manager, which both react to changes in the market and take it outside the passive investment arena.

Mr. Yanacheak said his concern is that if the hedging is working out for the insurance company, but the consumer has a question because his or her account value is not increasing as expected, is there a way to challenge the calculation. He said, in his mind the insurance commissioner has to be able to, at a minimum, intervene to explain. He said this is not an issue with a public index that is used more than just in an insurance product. Mr. Yanacheak said where there is no use case for the index, it becomes problematic. Mr. Birnbaum said changes to the disclosure requirements will change insurer behavior. He said if the algorithms must be disclosed to consumers, insurers will respond with products that are more transparent and that will better meet consumer needs. He said this is the result of manipulating historical experience to create a fabulous illustration. He said this creates an unusually large disconnect between past experience and future performance because the past is a product of data mining, and there is no way that will work on a going forward basis. Ms. Meyer pointed out that Model #245 already requires a disclosure that states that past performance is not an indication of future performance.

Mr. Struk suggested including a drafting note suggesting that states may want to consider making the algorithm available to consumers upon request. Mr. Benchaaboun noted that algorithms are not required to be filed during the product approval process. Mr. Yanacheak asked Working Group members how they want to handle this issue. Florida, Kansas, Maryland and Minnesota said they would like the algorithm to be made available to the insurance commissioner only, with a drafting note stating that states may want to consider making the algorithm available to consumers upon request. Rhode Island and Texas indicated they would like the algorithm to be made available to the insurance commissioner and to consumers upon request. Mr. Yanacheak said the next draft would have the algorithm available to the insurance commissioner, with a drafting note to the states.

3. Discussed How to Describe What Is Meant by “a Combination of Indices or Other Financial Instruments”

Mr. Yanacheak said he would like to discuss what the Working Group thinks should and should not be allowed to be illustrated, whether that is called “indices” or “other financial instruments.” Ms. Meyer suggested allowing the illustration of indices or other financial instruments, each of which has its own verifiable and published performance history and has been in existence for 15 years. Mr. Birnbaum suggested a minimum requirement that a daily value is published. Mr. Yanacheak gave some examples of financial reference points used in certain products to see whether the Working Group thought it should be allowed to illustrate. He said there are products that have used the closing price on gold or other commodities, like oil. He said other products use currency or a blend of currency exchange rates. He said exchange-traded fund (ETF) closing prices are also used and wondered whether they should be allowed. He said he is not sure any of these could be considered indices. Pat Reeder (ACLI) said he could take this issue back to the ACLI membership.

Mr. Robinson said there are lots of financial instruments that can be used as a referent to come up with a credited rate. He said the question is whether anything should be disallowed from an illustration perspective. Mr. Robinson pointed out that the indices or financial instruments used are not totally random; they are limited by what hedges are available. Mr. Yanacheak said a revised draft based on the Working Group’s recent discussions would be distributed to Working Group members, interested state insurance regulators and interested parties and posted on the Working Group’s web page. He requested comments and suggestions on the issue of how to bring clarity to what indices or other financial instruments should be allowed to be illustrated.

Having no further business, the Annuity Disclosure (A) Working Group adjourned.

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AGENDA ITEM #3c
Life Insurance Illustration Issues (A) Working Group
Summary Report

Conference Calls

LIFE INSURANCE ILLUSTRATION ISSUES (A) WORKING GROUP
October 21, 2019 / September 17, 2019 / September 3, 2019 / July 30, 2019

Summary Report

The Life Insurance Illustration Issues (A) Working Group met via conference call Oct. 21, Sept. 17, Sept. 3 and July 30, 2019. During these meetings, the Working Group:

1. Continued making progress in the development of a one- to two-page consumer-oriented policy overview document in order to achieve its charge of improving the understandability of the life insurance policy summaries already required in Section 7B of the *Life Insurance Illustrations Model Regulation* (#582) and Section 5A(2) of the *Life Insurance Disclosure Model Regulation* (#580).
2. Continued to discuss draft revisions to Model #580 to include a policy overview document.
3. Discussed the timing for delivery of the policy overview document as it relates to delivery of the *Life Insurance Buyer's Guide* (Buyer's Guide), including whether the timing for delivery of the Buyer's Guide should be changed or whether the policy overview document should be delivered separately from the Buyer's Guide.
4. Requested comments on the timing issue by Nov. 15.
5. Pending specific guidance from the Life Insurance and Annuities (A) Committee on the timing issue, the Working Group would like to request an extension of the Request for NAIC Model Law Development in order to make progress on draft revisions to Model #580 creating a policy overview and sample template. Provisions in the model that are affected by the timing issue will be flagged.

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Draft: 11/13/19

Life Insurance Illustration Issues (A) Working Group
Conference Call
October 21, 2019

The Life Insurance Illustration Issues (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Oct. 21, 2019. The following Working Group members participated: Richard Wicka, Chair, and Barbara Belling (WI); Perry Kupferman (CA); Chris Struk (FL); Teresa Winer (GA); Mike Yanacheak and Russ Gibson (IA); Mary Mealer (MO); Bob Harkins (NE); Brian Hoffmeister (TN); and Deanna Osmonson and John Carter (TX). Also participating were: Tate Flott (KS); Gary Jones (PA); and David Hippen (WA).

1. Reviewed its Charge and Work Plan

Mr. Wicka reminded the Working Group of its charge to “explore how the narrative summary required by Section 7B of the *Life Insurance Illustrations Model Regulation* (#582) and the policy summary required by Section 5A(2) of the *Life Insurance Disclosure Model Regulation* (#580) can be enhanced to promote consumer readability and understandability of these life insurance policy summaries, including how they are designed, formatted and accessed by consumers.” He reminded the Working Group that it had initially decided to add a requirement for a policy overview document in both Model #580 and Model #582 to fulfill the Working Group’s charge. However, in September 2018, the Working Group agreed to simplify the approach it had been working on by revising just Model #580 to include the requirement of a policy overview document to accompany all life insurance policies for delivery with the *Life Insurance Buyer’s Guide* (Buyer’s Guide). This new approach eliminates the need for revisions to Model #582.

Mr. Wicka explained that the purpose of this conference call is to continue the discussions regarding the May 20 draft revisions to Model #580 (See Attachment ?-A) from its Sept. 3 conference call.

2. Discussed the May 20 Draft of Model #580

a. Subparagraph 5A(2)(e)(iv) and Subparagraph (v)

The Working Group continued to discuss Section 5A(2)(e) “‘Policy Information’ which shall include the following information, as applicable.” The Working Group discussed the suggestion that Birny Birnbaum (Center for Economic Justice—CEJ) submitted to combine 5A(2)(e)(iv) and (v), which both provide information about the death benefit. The Working Group agreed to the following revision:

- (iv) A yes or no indication of whether the death benefit can change, and if yes, a description of the reasons and timing for a change in the death benefit;

b. Section 5A(2)(e)(vi)

The Working Group agreed to delete Section 5A(2)(e)(vi) “policy effective date” because the information is not available pre-underwriting, and the information is readily available elsewhere post-underwriting.

c. Section 5A(2)(f)

The Working Group discussed revising the “additional policy benefits” listed under Section 5A(2)(f)(i) – (ix) into “yes or no” questions. The Working Group also discussed relocating (vii) “option to lower benefits to reduce premiums” to Section 5A(2)(d), which is the section on costs. The Working Group agreed to move (viii) and to revise Section 5A(2)(f) as follows:

- (f) “Additional Policy Benefits” which shall include the following information, as applicable:

- (i) A yes or no indication whether a waiver of premium or deductions option is available;
- (ii) A yes or no indication of whether policy conversion options exist and, if yes, a brief description of conversion options available;

- (iii) A yes or no indication of options to extend the term of the coverage;
- (iii) A yes or no indication of any available optional riders as requested by the insured, and if yes, an indication if there is an additional cost;
- (vi) A yes or no indication of any living benefit option(s);
- (vii) A yes or no indication as to whether the policy can accumulate cash value;
- (viii) A yes or no indication of whether there are guaranteed interest rates on fixed accounts and any indexed account options as requested by the insured.

3. Discussed its Next Steps

Mr. Wicka said that a revised draft would be posted and that he would take additional comments on the structure and wording. He said he thinks it would be easier to consider those comments once the agreed upon revisions are incorporated into a revised draft.

Mr. Wicka said he plans to ask the Life Insurance and Annuities (A) Committee to provide guidance to the Working Group on the issue of timing for the delivery of the policy overview. He asked for comments to be sent via email to Jennifer Cook (NAIC) by Nov. 15 to give sufficient time to review them prior to the Fall National Meeting. Mr. Wicka asked for comments to express a preference for one of the following timing options: 1) keep the timing in the current draft – delivery of the policy overview at the same time as the Buyer’s Guide, which is before the purchase of a policy, or if there is a “free look period,” at the same time or prior to delivery of the policy; 2) change the timing for the delivery of the policy overview and the Buyer’s Guide – both delivered before the purchase of a policy; or 3) separate timing requirements for the policy overview and the Buyer’s Guide – keep the same timing for the Buyer’s Guide and require delivery of the policy overview prior to purchase of a policy. He said comments on whether the policy overview should be a stand-alone document or a cover page could be included. Mr. Wicka said the comments will inform the Working Group report to the Life Insurance and Annuities (A) Committee.

Michael Lovendusky (American Council of Life Insurers—ACLI) said the ACLI will plan to submit a comprehensive comment letter. He said the ACLI has reviewed the entire work effort of the Life Insurance and Illustration Issues (A) Working Group and concluded that it has fulfilled its charge to “explore” how the narrative and policy summary can be enhanced. He said any further work with respect to the larger issue of timing is beyond the scope of the current charge. Ms. Winer said that it may be possible to untether the policy overview from the Buyer’s Guide, but it needs to remain connected to the illustration. Mr. Birnbaum said the Working Group charge refers to the narrative summary required by Section 7B of Model #582 and the policy summary required by Section 5A(2) of Model #580. He said the narrative summary is tied to the illustration, but the policy overview serves a different purpose; it is a review of the basic features of the policy. He said the narrative summary explains the illustration, and illustrations are provided before purchase, so it should not be a stretch to provide a policy overview before purchase, especially since one of its purposes is to help consumers shop for insurance.

Having no further business, the Life Insurance Illustration Issues (A) Working Group adjourned.

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Draft: 11/5/19

Life Insurance Illustration Issues (A) Working Group
Conference Call
September 17, 2019

The Life Insurance Illustration Issues (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Sept. 17, 2019. The following Working Group members participated: Richard Wicka, Chair (WI); Jodi Lerner (CA); Chris Struk (FL); Teresa Winer (GA); Mike Yanacheak (IA); Mary Mealer (MO); Bob Harkins (NE); Brian Hoffmeister (TN); and Doug Danzeiser (TX). Also participating were: Tate Flott (KS); Denise Lamy (NH); Tom Kilcoyne (PA); Tanji Northrup (UT); James Young (VA); and David Hippen (WA).

1. Reviewed its Charge and Work Plan

Mr. Wicka reminded the Working Group of its charge to “explore how the narrative summary required by Section 7B of the *Life Insurance Illustrations Model Regulation* (#582) and the policy summary required by Section 5A(2) of the *Life Insurance Disclosure Model Regulation* (#580) can be enhanced to promote consumer readability and understandability of these life insurance policy summaries, including how they are designed, formatted and accessed by consumers.” He reminded the Working Group that it had initially decided to add a requirement for a policy overview document in both Model #580 and Model #582 to fulfill the Working Group’s charge. However, in September 2018, the Working Group agreed to simplify the approach it had been working on by revising just Model #580 to include the requirement of a policy overview document to accompany all life insurance policies for delivery with the *Life Insurance Buyer’s Guide* (Buyer’s Guide). This new approach eliminates the need for revisions to Model #582.

Mr. Wicka explained that the purpose of this conference call is to continue the discussions about the May 20 draft revisions to Model #580 (See Attachment ?-A) from its last conference call on Sept. 3.

2. Discussed May 20 Draft of Model #580

a. Revising the “Cost Information” Definition

Mr. Wicka said that following the Working Group’s Sept. 3 conference call, he suggests the following revisions to Section 5A(2)(d):

(d) “Cost Information” which shall include the following information, as applicable:

(i) Initial premium or estimated premium at the time of application and premium mode selected;

(ii) ~~A short statement describing~~ yes or no indication if the premium varies ~~can vary after the first year~~; and, if so, ~~a statement as to where the insured can find information~~ a brief explanation as to how the premium will be determined after the first year;

(iii) ~~Available options for premium funding such as policy payment periods, any dividend options or lump sum payments options;~~

He explained that the revision to (i) allows for flexibility in the information included in the Policy Summary in case it were to be delivered prior to underwriting. Birny Birnbaum (Center for Economic Justice—CEJ) agreed with this revision and suggested adding language saying the premium is based on initial information and is subject to change. Mr. Wicka said the suggested revision to (ii) is to simplify the requirement, and the suggestion to delete (iii) was made in several comments. The Working Group agreed to make these revisions.

b. Moving the Reference to “Waiver of Premium or Deductions Option” from “Cost Information” to “Additional Policy Benefits”

The Working Group discussed whether the information required in Section 5A(2)(d)(iv)—“A yes or no indication whether a waiver of premium or deductions option is available”—would better fit in the information required under Section 5A(2)(f) “Additional Policy Benefits, which shall include the following information, as applicable.” The Working Group agreed that it made sense to relocate (iv) to Section 5A(2)(f).

c. Rewording Section 5A(2)(d)(v)

The Working Group discussed streamlining (v) to a yes or no indication of whether there are surrender charges, which is consistent with the formatting elsewhere. The Working Group discussed whether in this instance, yes or no provides enough information. Mr. Birnbaum said the goal is to provide key information for comparison purposes and suggested providing a schedule of charges. Ms. Winer said that disclosure is helpful, but only if it is meaningful. She said that providing too much information is confusing and not helpful. Brian Lessing (AXA Equitable) said surrender charges are complicated and are based on a formula that can differ based on premiums paid. Mr. Wicka said he would like consumers to be aware that there are surrender charges, but he said is not convinced that there needs to be a high level of detail included. Ms. Lerner said it is important for consumers to know what the surrender charges are before they purchase a product and suggested a basic summary of the surrender charge, how long it lasts and when it is highest, like in the first five years. Ms. Mealer suggested perhaps the yes or no question and how long are there surrender charges, and then direct them to the policy for details. Mr. Birnbaum said he is concerned that consumers need this information before purchasing the policy. Ms. Lerner agreed to provide the Working Group with an example of a disclosure of this information.

The Working Group agreed to make the following change to Section 5A(2)(d)(v):

- (v) A description of yes or no indication of whether there are surrender charges and, if so, the period of time that surrender the charges apply;

d. Revising the “Cost of Insurance” Information

The Working Group discussed Section 5A(2)(d)(vi): “A narrative description of the cost of insurance and other fees needed to keep the policy in force and how those fees may change over time.” Ms. Winer expressed concern that the information included would be overwhelming to consumers and would defeat the purpose of having a summary. She said the purpose of the summary is to alert consumers to information so they can know to look deeper, not to provide exhaustive detail. Mr. Wicka agreed that the intent is for consumers to understand how they are going to be charged, short of putting everything in the summary. Mr. Birnbaum said he wants more explicit disclosure of the charges and fees. He said he would like to see an itemization like one included in the discussion about *Actuarial Guideline XLIX—The Application of the Life Illustrations Model Regulation to Policies with Index-Based Interest* (AG 49). He said it would be easy to include this information here: What is the cost of insurance? How much is it? Can it change? How much can it change? Ms. Mealer agreed with Mr. Birnbaum on this point.

Michael Lovendusky (American Council of Life Insurers—ACLI) said that the Life Actuarial (A) Task Force’s work on indexed universal life and AG 49 is at the other end of the spectrum from this discussion about a Policy Summary. He said that this is a simple “front porch” document and that cost of insurance fees in policies are hotly litigated. He said the idea that the Policy Summary could tease out the elemental pieces of the cost of insurance will lead to useless information at best or so much information it would not be helpful. Mr. Lovendusky suggested including a statement that the cost of insurance exists and that there is a cap beyond which it cannot exceed and leave it at that. Ms. Winer said cost of insurance depends on cash value and multipliers and is complicated. Mr. Birnbaum said there is no need to get too caught up in the details; he said just include enough information that a consumer could compare one policy to another and say, for example: The cost of insurance is between 1% of cash value up to 3% of cash value. Mr. Lovendusky suggested including what the cost of insurance is and how high it can go up, but get no more granular. Mr. Wicka suggested including three elements: 1) cost of insurance charge; 2) net amount at risk; and 3) maximum allowable charge. The Working Group agreed to the following revision to Section 5A(2)(d)(vi):

- (vi) If applicable, Aa narrative description—explanation of the cost of insurance fee, a narrative explanation of the net amount of risk to which the fee will apply, and other fees needed to keep the policy in force and how those fees may change over time the maximum allowable cost of insurance fee allowed under the policy.

e. Deleting “Product Type (Including Single or Joint Policy)”

Mr. Wicka said the CEJ suggested removing the requirement for indicating “product type (including single or joint policy)” in Section 5A(2)(e)(i). Ms. Lerner said the information should be included, although she said she does not have a preference about location. The Working Group observed that this information was included at the top of the sample policy overview and agreed to look at it again when reviewing the sample.

f. Deleting “Form Number”

Mr. Wicka said the ACLI suggested, and the Working Group agreed, to the following revision to Section 5A(2)(e)(ii) because the form number is not necessary information for a consumer:

(ii) Product name ~~and form number~~

g. Clarifying “Coverage Period Description”

The Working Group discussed what information is intended to be included. Mr. Yanacheak said this is intended to capture how long a policy’s term is—a term of years or for life. Mr. Birnbaum said it is intended to answer the question: If I pay my premium, this policy will cover x amount of time. Mr. Yanacheak asked whether this encompasses a term policy that is annually renewable for a much higher cost after the initial term. He said this could be how the policy is worded or available through a rider. Mr. Yanacheak said the final language just needs to be clear. Mr. Wicka suggested, and the Working Group agreed, to the following revised language to Section 5A(2)(e)(iii):

(iii) Indicate whether it is a term or permanent policy. If it is a term policy, indicate the length of the initial term.

3. Discussed its Next Steps

Mr. Wicka said the Working Group will review a revised draft and consider the suggestions of Mr. Birnbaum to put the data elements in a different order during its next conference call.

Having no further business, the Life Insurance Illustration Issues (A) Working Group adjourned.

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Draft: 10/18/19

Life Insurance Illustration Issues (A) Working Group
Conference Call
September 3, 2019

The Life Insurance Illustration Issues (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call July 30, 2019. The following Working Group members participated: Richard Wicka, Chair, and Justine Bellamy (WI); Jodi Lerner (CA); Chris Struk (FL); Teresa Winer (GA); Mike Yanacheak and Russ Gibson (IA); Mary Mealer (MO); Robert E. Harkins (NE); Jana Jarrett (OH); Rachel Jade-Rice (TN); and John Carter and Doug Danzeiser (TX). Also participating were: Steve Ostlund (AL); Mike Chrysler (IL); Tate Flott (KS); Denise Lamy (NH); James Young (VA); and David Hippen (WA).

1. Reviewed its Charge and Work Plan

Mr. Wicka reminded the Working Group of its charge to “explore how the narrative summary required by Section 7B of the *Life Insurance Illustrations Model Regulation* (#582) and the policy summary required by Section 5A(2) of the *Life Insurance Disclosure Model Regulation* (#580) can be enhanced to promote consumer readability and understandability of these life insurance policy summaries, including how they are designed, formatted and accessed by consumers.” He reminded the Working Group that it had initially decided to add a requirement for a policy overview document in both Model #580 and Model #582 to fulfill the Working Group’s charge. However, in September 2018, the Working Group agreed to simplify the approach it had been working on by revising just Model #580 to include the requirement of a policy overview document to accompany all life insurance policies for delivery with the *Life Insurance Buyer’s Guide* (Buyer’s Guide). This new approach eliminates the need for revisions to Model #582.

Mr. Wicka explained that the purpose of this conference call is to continue the discussions about the May 20 draft revisions to Model #580 (Attachment ?-A) started during its last call on July 30.

Michael Lovendusky (American Council of Life Insurers—ACLI) said the ACLI had submitted comments on the general direction of the Working Group. He said the ACLI was happy to continue with developing the policy overview for the three types of life insurance policies, but he observed that it would be challenging to finish by the Fall National Meeting. He said moving the timeframe for delivery of the policy overview to before the time when personal information has been gathered and underwriting has occurred defeats the purpose of the document. He said the ACLI suggests that, if the time frame for delivery is going to be changed, rather than continue developing a policy overview, the Working Group should align this effort with the Life Insurance Online Guide (A) Working Group that is currently working on an online buyer’s guide for consumers.

2. Discussed May 20 Draft of Model #580 and May 16 Sample Overview Form

a. Discussed “Illustration” Definition

The May 20 draft includes the following definition:

“Illustration” means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years that is subject to [insert state equivalent to Model #582].

Mr. Lovendusky said the ACLI made two alternative recommendations for revising the definition of “Illustration” in Model #580. The first suggestion was to simplify the definition so that it points to the state law equivalent to Model #582: “‘Illustration’ means a presentation or depiction of a policy of life insurance that is subject to [insert state equivalent to Model #582].” He said an alternative suggestion is for the definition to exactly duplicate the definition in Model #582. Birny Birnbaum (Center for Economic Justice—CEJ) said referencing the state law equivalent to Model #582 would only work if a state has adopted something exactly like the model. He suggested adding a reference to guaranteed elements in addition to non-guaranteed elements because Model #582 provides that illustrations include guaranteed and non-guaranteed elements.

Mr. Wicka said the definition in the May 20 draft is the exact language from Model #582, without the description of the three types of illustrations. The Working Group agreed to keep the language from the May 20 draft.

b. Discussed “Policy Overview” Definition.

The May 20 draft includes the following definition:

“Policy Overview” means a brief summary of the policy prepared in accordance with this regulation, and an example may be found in Appendix A.

Mr. Birnbaum suggested revising this definition to include language mirroring the purpose of the model and requiring that a policy overview is substantially similar to the sample documents being developed, as follows:

“Policy Overview” means a document describing the basic features of the policy presented in a manner to facilitate the purposes of this model, containing the elements required in section 5.A., and substantially similar to the model forms found in Appendix A.

Mr. Birnbaum said the narrative and policy summaries created by the insurance companies to comply with the requirements in Model #580 and Model #582 were wildly different from each other, and the substantially similar language is needed in order to not end up with the same problem that led to the charge of the Working Group. Mr. Wicka reminded the Working Group that the intention from the beginning was to develop sample templates for policy overviews that would not be required. He asked the Working Group if there was a desire to revisit this issue. Ms. Mealer said she preferred having the templates serve as examples, not be a required form. Ms. Lerner said she would like for the samples to be mandatory because there should be a way for consumers to compare policies easily. Mr. Lovendusky said assisting consumers to compare products is outside the scope of the Working Group’s charge, and it would limit innovation and harm consumers. Mr. Birnbaum said the Working Group’s charge specifically includes how the summaries are “designed, formatted and accessed” by consumers, and the stated purpose of Model #580 is to “require insurers to deliver to purchasers of life insurance information that will improve the buyer’s ability to select the most appropriate plan of life insurance for the buyer’s needs.” The Working group agreed to keep the language from the May 20 draft.

c. Discussed Allowing Insurers to Combine the Guaranteed Premium and Benefit Patterns Summary with the Policy Overview When There is No Illustration

Mr. Wicka said the ACLI comment letter and the Pacific Life comment letter both suggested allowing an insurer to combine the “Policy Overview” with the “Guaranteed Premium and Benefit Patterns Summary” when a policy will not be marketed with an illustration. The comment letters suggested the following definition:

“Guaranteed Premium and Benefit Patterns Summary” is a separate document that accompanies the Policy Overview where the insurer has identified the policy as one that will not be marketed with an illustration. The insurer may combine the Guaranteed Premium and Benefit Patterns Summary and Policy Overview into a single document.

Mr. Wicka explained the evolution of the Policy Overview document from a cover page to the policy and narrative summaries to a stand-alone document to be delivered at the same time as the Buyer’s Guide. Ms. Mealer said she is not opposed unless there is an identifiable harm to combining the documents. Ms. Lerner said she was hesitant to do anything that would make documents longer, and therefore, less consumer friendly. Mr. Danzeiser said he does not object to combining the documents.

Mr. Birnbaum said this proposal would recreate the problems that gave rise to the need for the charge. He said the initial proposal of a one-to-two-page cover document that explains the key features of the policy is not the same as the proposal to allow insurers to combine these two documents. He said allowing insurers to combine the documents is counter-productive to the goals of the Working Group to improve consumers’ ability to compare products. Mr. Lovendusky said it was never the goal of the Working Group to have a template to help consumers compare policies. Mr. Birnbaum said the format will change if the two documents are combined, and there is no evidence that combining the documents will make them any shorter or easier to understand. He said it is more likely that they will be less consumer friendly. Ms. Lerner said the Working Group’s charges are to promote consumer readability and understandability through consideration of how they are designed, formatted and accessed by consumers. She said the way it is set out in the May 20 draft promotes consumer understandability through a consistent format.

Ms. Mealer made motion, seconded by Mr. Harkins, to replace the definition of “Guaranteed Premium and Benefit Patterns Summary” in the May 20 draft with the language proposed by the ACLI. Missouri and Texas voted in favor of the motion. California, Iowa, Nebraska and Tennessee opposed the motion. The motion failed. The definition of “Guaranteed Premium and Benefit Patterns Summary” will not change from the May 20 draft.

d. Discussed Timing for Delivery of Policy Overview

Mr. Wicka explained that Section 5A(1) requires insurers to provide a Buyer’s Guide to all prospective purchasers, prior to accepting the applicant’s initial premium or premium deposit, except when there is a “free look” period of at least 10 days, in which case, the Buyer’s Guide may be delivered with the policy or prior to delivery of the policy. Section 5A(2) requires that the Policy Overview is delivered at the same time as the Buyer’s Guide. Ms. Lerner said she would like to see the Buyer’s Guide and the Policy Overview delivered at the time of application. She said if the Buyer’s Guide and Policy Overview are intended to help people understand the type of insurance they would like to purchase, getting it at the time of policy delivery is too late. She said if either of these documents are to be meaningful, consumers need them earlier. Mr. Struck said it would be preferable for people to get information to help them understand what they are purchasing, rather than what they have already purchased.

Mr. Lovendusky said a change in the timing for providing the Buyer’s Guide would create a substantial change in operations for insurers, and it is beyond the scope of what the Working Group should be trying to achieve. He said if the delivery requirements are changed, the Policy Overview cannot include some of the detailed consumer-specific information contemplated. Mr. Wicka reiterated that the Working Group’s charge specifically contemplates how summaries are “designed, formatted and accessed” by consumers, which encompasses the delivery requirement. Ms. Winer said information is largely, if not exclusively, online, so it may be time to revisit the delivery timing requirements.

Mr. Wicka said another option is to separate the Buyer’s Guide delivery requirements from the Policy Overview. Mr. Birnbaum said they could be separated, but it makes sense to deliver them at the same time. He said with respect to the Buyer’s Guide, it is a static document that can be easily delivered electronically. He said the Policy Overview should also be delivered before consumers have paid their premium. He said industry’s position ensures that consumers cannot shop before they apply.

Randy Foster (American International Group—AIG) said it would be extremely burdensome to have to provide the Policy Overview at the time of application. He said there is no policy at the time of application and consumers may end up with something completely different after underwriting. He said while much is unknown at the time of application, at the time of policy delivery, things are set, and consumers have the free look period to assess the details. He said if something is provided earlier in the process, it will be more difficult to prove up compliance.

Mr. Wicka said the Working Group needs to have additional discussion before changing the timing requirements for delivery of the Policy Overview. The Working Group agreed.

Having no further business, the Life Insurance Illustration Issues (A) Working Group adjourned.

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Draft: 9/12/19

Life Insurance Illustration Issues (A) Working Group
Conference Call
July 30, 2019

The Life Insurance Illustration Issues (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call July 30, 2019. The following Working Group members participated: Richard Wicka, Chair (WI); Jodi Lerner (CA); Chris Struk (FL); Teresa Winer (GA); Mike Yanacheak (IA); Mary Mealer (MO); Robert E. Harkins (NE); Brian Hoffmeister (TN); and Doug Danzeiser (TX). Also participating were: Tate Flott (KS); Denise Lamy (NH); Tom Kilcoyne (PA); Tanji Northrup (UT); James Young (VA); and David Hippen (WA).

1. Reviewed its Charge and Work Plan

Mr. Wicka reminded the Working Group of its charge to “explore how the narrative summary required by Section 7B of the *Life Insurance Illustrations Model Regulation* (#582) and the policy summary required by Section 5A(2) of the *Life Insurance Disclosure Model Regulation* (#580) can be enhanced to promote consumer readability and understandability of these life insurance policy summaries, including how they are designed, formatted and accessed by consumers.” He reminded the Working Group that it had initially decided to add a requirement for a policy overview document in both Model #580 and Model #582 to fulfill the Working Group’s charge. However, in September 2018, the Working Group agreed to simplify the approach it had been working on by revising just Model #580 to include the requirement of a policy overview document to accompany all life insurance policies for delivery with the *Life Insurance Buyer’s Guide* (Buyer’s Guide). This new approach eliminates the need for revisions to Model #582.

Mr. Wicka explained that the purpose of this conference call is to discuss the May 20 draft revisions to Model #580 (Attachment ?-A and the May 16 sample overview (Attachment ?-B) that were exposed for a public comment period ending June 21. He said comments were posted on the Annuity Disclosure (A) Working Group web page.

2. Discussed the May 20 Draft of Model #580 and May 16 Sample Overview Form

a. Discussed the “Illustration” Definition

The May 20 draft includes the following definition: “Illustration” means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years that is subject to [insert state equivalent to Life Insurance Illustrations Model Regulation].

Michael Lovendusky (American Council of Life Insurers—ACLI) said the ACLI made two alternative recommendations for revising the definition of “illustration” in Model #580. The first suggestion was to simplify the definition so it points to the state law equivalent to Model #582: “Illustration means a presentation or depiction of a policy of life insurance that is subject to [insert state equivalent to Life Insurance Illustration Model Regulation.” He said an alternative suggestion is for the definition to exactly duplicate the definition in Model #582. Birny Birnbaum (Center for Economic Justice—CEJ) said referencing the state law equivalent to Model #582 would only work if a state has adopted something exactly like the model. Mr. Birnbaum suggested adding a reference to guaranteed elements in addition to nonguaranteed elements because Model #582 provides that illustrations include guaranteed and nonguaranteed elements.

Mr. Wicka said that the definition in the May 20 draft is the exact language from Model #582, without the description of the three types of illustrations. The Working Group agreed to keep the language from the May 20 draft.

b. Discussed “Policy Overview” Definition.

The May 20 draft includes the following definition: “‘Policy Overview’ means a brief summary of the policy prepared in accordance with this regulation, and an example may be found in Appendix A.”

Mr. Birnbaum suggested revising this definition to include language mirroring the purpose of the model and to require that a policy overview is substantially similar to the sample documents being developed, as follows: “‘Policy overview’ means a document describing the basic features of the policy presented in a manner to facilitate the purposes of this model, containing the elements required in section 5.A. and substantially similar to the model forms found in Appendix A.”

Mr. Birnbaum said the narrative and policy summaries created by the insurance companies to comply with the requirements in Model #580 and Model #582 were wildly different from each other and that substantially similar language is needed in order to not end up with the same problem that led to the charge of the Working Group. Mr. Wicka reminded the Working Group that the intention from the beginning was to develop sample templates for policy overviews that would not be required. He asked the Working Group if there was a desire to revisit this issue. Ms. Mealer said she prefers having the templates serve as examples and not be a required form. Ms. Lerner said she would like for the samples to be mandatory because there should be a way for consumers to compare policies easily. Mr. Lovendusky said assisting consumers to compare products is outside the scope of the Working Group's charge and would limit innovation and harm consumers. Mr. Birnbaum said the Working Group's charge specifically includes how the summaries are "designed, formatted and accessed" by consumers, and the stated purpose of Model #580 is to "require insurers to deliver to purchasers of life insurance information that will improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs." The Working group agreed to keep the language from the May 20 draft.

c. Discussed Allowing Insurers to Combine the Guaranteed Premium and Benefit Patterns Summary with the Policy Overview When There Is No Illustration

Mr. Wicka said the ACLI comment letter and the Pacific Life comment letter both suggested allowing an insurer to combine the "Policy Overview" with the "Guaranteed Premium and Benefit Patterns Summary" when a policy will not be marketed with an illustration. They suggested the following definition: "'Guaranteed Premium and Benefit Patterns Summary' is a separate document that accompanies the Policy Overview where the insurer has identified the policy as one that will not be marketed with an illustration. The insurer may combine the Guaranteed Premium and Benefit Patterns Summary and Policy Overview into a single document."

Mr. Wicka explained the evolution of the Policy Overview document from a cover page to the policy and narrative summaries to a stand-alone document to be delivered at the same time as the Buyer's Guide. Ms. Mealer said she is not opposed unless there is an identifiable harm to combining the documents. Ms. Lerner said she is hesitant to do anything that would make documents longer and, therefore, less consumer-friendly. Mr. Danzeiser said he does not object to combining the documents.

Mr. Birnbaum said this proposal would recreate the problems that gave rise to the need for the charge. He said the initial proposal of a one- to two-page cover document that explains the key features of the policy is not the same as the proposal to allow insurers to combine these two documents. He said allowing insurers to combine the documents is counter-productive to the goals of the Working Group to improve consumers' ability to compare products. Mr. Lovendusky said it was never the goal of the Working Group to have a template to help consumers compare policies. Mr. Birnbaum said the format will change if the two documents are combined, and there is no evidence that combining the document will make them any shorter or easier to understand. He said it is more likely they will be less consumer-friendly. Ms. Lerner said the Working Group's charges are to promote consumer readability and understandability through consideration of how they are designed, formatted and accessed by consumers. She said the way it is set out in the May 20 draft promotes consumer understandability through a consistent format.

Ms. Mealer made motion, seconded by Mr. Harkins, to replace the definition of "Guaranteed Premium and Benefit Pattern Summary" in the May 20 draft with the language proposed by the ACLI. Missouri and Texas voted in favor of the motion. California, Iowa, Nebraska and Tennessee opposed. The motion failed. The definition of "Guaranteed Premium and Benefit Pattern Summary" does not change from the May 20 draft

d. Discussed Timing for Delivery of the Policy Overview

Mr. Wicka explained that Section 5A(1) requires insurers to provide a Buyer's Guide to all prospective purchasers, prior to accepting the applicant's initial premium or premium deposit, except when there is a "free look" period of at least 10 days. In that case, the Buyer's Guide may be delivered with the policy or prior to delivery of the policy. Section 5A(2) requires that the Policy Overview is delivered at the same time as the Buyer's Guide. Ms. Lerner said that she would like to see the Buyer's Guide and the Policy Overview delivered at the time of application. She said if the Buyer's Guide and Policy Overview are intended to help people understand the type of insurance they would like to purchase, getting it at the time of policy delivery is too late. She said if either of these documents are to be meaningful, consumers need them earlier. Mr. Struck said it would be preferable for people to get information to help them to understand what they are purchasing, rather than what they have already purchased.

Mr. Lovendusky said a change in the timing would create a substantial change in operations for insurers and is beyond the scope of what the Working Group should be trying to achieve. He said changes to the timing for the Buyer's Guide are beyond the scope of the Working Group's charge. He said if the delivery requirements are changed, the Policy Overview cannot include some of the detailed consumer-specific information contemplated. Mr. Wicka reiterated that the Working Group's charge specifically contemplates how summaries are "designed, formatted and accessed" by consumers, which encompasses the delivery requirement. Ms. Winer said information is largely, if not exclusively, online, so it may be time to revisit the delivery timing requirements.

Mr. Wicka said another option is to separate the Buyer's Guide delivery requirements from the Policy Overview. Mr. Birnbaum said they could be separated but that it makes sense to deliver them at the same time. He also said, with respect to the Buyer's Guide, it is a static document that can be easily delivered electronically. He said the Policy Overview should also be delivered before consumers have paid their premium. He said industry's position ensures that consumers cannot shop before they apply.

Randy Foster (AIG) said it would be extremely burdensome to have to provide the Policy Overview at the time of application. He said there is no policy at the time of application, and consumers may end up with something completely different after underwriting. He said while much is unknown at the time of application, at the time of policy delivery, things are set and consumers have the free look period to assess the details. He said if something is provided earlier in the process, it will be more difficult to prove up compliance.

Mr. Wicka said the Working Group needs to have additional discussion before changing the timing requirements for delivery of the Policy Overview. The Working Group agreed.

Having no further business, the Life Insurance Illustration Issues (A) Working Group adjourned.

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AGENDA ITEM #3d
Life Insurance Online Guide (A) Working Group
Summary Report

LIFE INSURANCE ONLINE GUIDE (A) WORKING GROUP

Summary Report

The Life Insurance Online Guide (A) Working Group has not met since the last National Meeting.

1. Mary Mealer (MO), chair, retired last month and Sarah Neil (RI) will be taking her place as Working Group chair.
2. The Working Group plans to meet via conference call following the Summer National Meeting.

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AGENDA ITEM #3e
Retirement Security (A) Working Group
Summary Report

Conference Calls

RETIREMENT SECURITY (A) WORKING GROUP
November 13, 2019 / October 23, 2019

Summary Report

The Retirement Security (A) Working Group met via conference call Nov. 13 and Oct. 23, 2019. During these meetings, the Working Group:

1. Heard presentations from AARP, the Insured Retirement Institute (IRI) and the National Financial Educators Council (NFEC) on general and workplace retirement security and financial literacy programs.
2. Requested comments on the Working Group chair's draft work plan by Dec. 4.

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Draft: 11/14/19

Retirement Security (A) Working Group
Conference Call
November 13, 2019

The Retirement Security (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Nov. 13, 2019. The following Working Group members participated: Stephen C. Taylor, Chair (DC); Doug Ommen represented by Sonya Sellmeyer (IA); Al Redmer Jr. represented by Joy Hatchette (MD); Steve Kelley represented by Fred Andersen (MN); Linda A. Lacewell represented by Peter Thaisz (NY); and Elizabeth Kelleher Dwyer represented by Sarah Neil (RI). Also participating were: Bruce Sartain (IL); Tate Flott (KS); Denise Lamy (NH); Cuc Nguyen (OK); Deanna Osmonson (TX); and Janelle Dvorak (WI).

1. Heard Presentations on Retirement Security Education

a. NFEC

Commissioner Taylor explained the purpose and goals of the Working Group. He said the Working Group's goal is to examine ways to promote retirement security consistent with the NAIC's continuing "Retirement Security Initiative." He said the Working Group would be discussing education issues, consumer protection and product innovation.

Commissioner Taylor recapped the last conference call of the Working Group and then introduced Vince Shorb (National Financial Educators Council—NFEC) to open the discussion. Mr. Shorb discussed how the financial problems in the country are at an epidemic level. He said retirement security affects more than the pocketbook; it also affects the personal life. He discussed employee wellness programs with the focus on preparation for the future.

Mr. Shorb said it is important to understand the past in order to understand the future. He said children pick up the habits of parents. He said if children see how their parents act and react to money and finances, they are more than likely to adopt those practices. He also said the old adage of "keeping up with the Joneses" has morphed into today's social media infusion and celebrity endorsements and influences. He said there is no counteracting to that type of assault.

Mr. Shorb said some states are tackling early education, such as Utah, but most kids are leaving home, such as to college, behind the proverbial "8-ball." He said too many parents and educators are looking at the short-term and not the long-term. He said all the time, one hears the basic calls for saving more and if you borrow you need to repay. He said the focus should be on financial behavior, sentiments and systems.

Mr. Shorb said that financial behavior means more than just telling people to save more. People need to understand what that means for the long-term and how to adapt behavior to the understanding. He said that sentiments mean understanding and knowing the hope and confidence for the future. He said the less hope and confidence people have about the future; the less likely people will work toward an end goal of financial security. He also said the fear of understanding money and how to use money properly prevents working toward that end goal. He said systems are meant to help with the earlier points of behavior and sentiments. He said an example would be auto-save programs.

Mr. Shorb offered five tips to aid in financial literacy and retirement security: 1) quality educators; 2) segmentation of the audience; 3) time; 4) multiple methods of instruction; and 5) objectives. He said too many educators lack the educational methodology, utilizing mostly lectures and power point presentations. He said more sophisticated methodologies and practices are needed to address behavior and sentiment.

Mr. Shorb explained that segmentation of the audience means that a financial literacy program or class needs to be tailored to the audience. For example, he said the socio-economic status is a factor to consider. He said that the warehouse worker who works at a lower hourly salary is different than the higher salary office worker. He said how financial literacy or retirement security is explained needs to be focused on retaining the interest of the employee and if a course is talking about options that are beyond the employee, the interest, if any, is lost.

Mr. Shorb explained the trans-theoretical model where one gauges the interest level of each employee and then tailor classes or information to that interest level. He gave an example of a simple survey, and depending on the answer, one can help

determine the level of interest of that employee in retirement security. He said if an employee wants to learn, they will; if they do not, then develop the material to raise the level of interest.

Mr. Shorb said more time is needed than the typical courses currently offered. He said standard courses can help, especially if they can offer the tools to aid the employee to help themselves. He said multiple methods of instruction is key to educating employees and utilizing the best methods to those employees. He said other methods than the usual live lecture or an online course would be useful. He said employers or educators need to understand what the objectives are with a retirement security or financial literacy program. For example, he asked what the objectives are to help employees reduce their debt or encourage employees to learn and utilize the company's retirement programs.

Mr. Shorb said educators should also pay attention to their audience. He said sometimes you see that aha moment in someone's eyes, and they get the importance of planning for their future. He said it is also important to motivate those that do not have that aha moment and impart the need for long-term thinking when it comes to one's financial retirement security. He said the earlier one starts educating, the better for the future of the person, and they can see results down the line.

Commissioner Taylor asked Mr. Shorb how early such education should start. Mr. Shorb said that a Brown University study showed that habits are formed as early as at the age of nine, and kids will pick up the habits of their parents. He said if parents are frivolous or spend-thrifty, it will be picked up by children. He said the earlier one starts educating about financial security and literacy, the better. He said this is especially important with the massive influence of social media in conjunction with mass consumption. He said reaching kids before high school is probably best. Commissioner Taylor asked if schools can play a role. Mr. Shorb said schooling, historically, was meant to educate on self-sufficiency and being prepared for the future. He said schools can play an important role.

Ms. Neil asked if educating the parents will help the kids down the line. Mr. Shorb said the more a parent can improve their own socio-economic position, the better for the children, and the children can and will learn from their parents' work to improve themselves. He said, statistically, kids will remain in the same socio-economic status as their parents.

Commissioner Taylor asked for an elaboration on segmentation. Mr. Shorb said simple, direct questions are best. He suggested asking a general question if the employee has interest in financial security and a more direct question if the employee has any interest in personal finances. Survey questions of that nature can help segment employees into levels of interest and then lead to the development of the right program. Commissioner Taylor asked what to do about those showing no interest. Mr. Shorb suggested helping those reluctant to focus on the topic as it could apply to them. For example, he said not to provide assignments, but provide case studies and ask what advice they would give to the subject in the case study. He said people are more inclined to give advice if it does not personally involve them. He said for many of those reluctant employees, case studies get them thinking about their own situation without feeling that they are being lectured.

Commissioner Taylor asked what size businesses the NFEC works with. Mr. Shorb said all sizes. He said the NFEC develops programs to scale and meet the needs of that specific business. Karrol Kitt (The University of Texas at Austin) said she wanted to thank Mr. Shorb and the chair for this resonation. She said, as an educator, she was very pleased to hear about teachable moments and the importance of education.

Commissioner Taylor asked the Working Group if anyone had any comments on the work plan he developed and had sent out prior to the conference call. Birny Birnbaum (Center for Economic Justice—CEJ) asked what role state insurance regulators and the NAIC have in the first three points under the education section of the work plan. He said there are other entities and groups that have more expertise and are working in this area. He asked what value is added in the NAIC and state insurance regulators examining this area. Commissioner Taylor replied that insurance has a large role to play and is part of an overall retirement security plan, and he believes the NAIC has and can play a role in helping Americans in their financial literacy and retirement security. He asked Mr. Birnbaum to submit any edits or suggestions to the work plan.

Commissioner Taylor asked the Working Group to submit any comments or edits to the work plan to David Torian (NAIC) by close of business (COB) Dec. 4.

Having no further business, the Retirement Security (A) Working Group adjourned.

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Draft: 10/24/19

Retirement Security (A) Working Group
Conference Call
October 23, 2019

The Retirement Security (A) Working Group met via conference call Oct. 23, 2019. The following Working Group members participated: Stephen C. Taylor, Chair (DC); Doug Ommen represented by Sonya Sellmeyer (IA); Al Redmer Jr. represented by Joy Hatchette (MD); Steve Kelley represented by Fred Andersen (MN); Linda A. Lacewell represented by Peter Thaisz (NY); Elizabeth Kelleher Dwyer represented by Sarah Neil (RI); and Todd E. Kiser represented by Tanji Northrup (UT). Also participating were: Bruce Sartain (IL); Tate Flott (KS); Annette James (NV); Cuc Nguyen (OK); and Doug Danzeiser (TX).

1. Heard Presentations on Retirement Security Education

a. AARP

Commissioner Taylor explained the purpose and goals of this Working Group. He said the Working Group's goal is to examine ways to promote retirement security consistent with the NAIC's continuing "Retirement Security Initiative." He said the Working Group would be discussing education issues, consumer protection and product innovation.

Commissioner Taylor asked Joe Valenti (AARP) and Sarah Mysiewicz Gill (AARP) to open the discussion. Mr. Valenti discussed two programs that AARP promotes: 1) the Saving for Retirement campaign; and 2) the Work and Save campaign. He said one of the keys to effective retirement security education is to reach people before key moments in their lives. He pointed out that just providing people with calculations tends to scare them off but providing guidance and comprehensive information is more helpful.

Mr. Valenti said that four out of 10 heads of households, age 55 to 64, have no savings. He said the median savings is \$120,000. Most believe they will simply work longer, but they do not take into account events that may prevent them to work longer. He said the Saving for Retirement campaign focuses on getting people into the conversation. He said the campaign offers a quick and easy retirement planning resource that enables users to chat with a friendly digital retirement coach to get their personalized action plan.

Ms. Gill said she works with the states and their legislatures. She said nearly 55 million workers do not have a way to save through their work. She said small business retirement plans cost much more than those available to larger employers. She said AARP has been working on a public/private partnership, similar to a 529 college savings plan. She said it is a contract with the private sector but administered by the state.

Ms. Gill said this design allow small businesses to offer simple, low-cost retirement savings plans to their employees, enabling more workers to provide for themselves rather than rely on taxpayer-paid services. Workers in businesses with fewer than 100 workers were much less likely to have access to a plan than workers in firms with more workers. She said some 30 states are considering retirement savings plans for small business employees, and seven states are already implementing them. She said the data shows that nearly 30 million workers are new savers.

Mr. Valenti said it is important to get people to think about lifetime income. He mentioned three bucket of funds and said people should look at money for now, such as for emergencies, periodic managed payouts and look at their longevity.

Commissioner Taylor asked if this partnership is voluntary to states and businesses. Ms. Gill said it is and said the programs are tailored to individual states. She said some states have businesses go through the private sector rather than a state plan.

Ms. Hatchette asked if there are target audiences or age groups. Ms. Gill said there is no specific targeting of any particular age group but said that millennials are a focus.

Commissioner Taylor asked about the costs of the partnership. Ms. Gill said there are costs upfront, but eventually it becomes self-sustaining and there is no cost to the business.

Mr. Thaisz noted that AARP discussed three buckets of funds for the decumulations stage, with the first one being emergency funds. He asked if AARP promotes saving for emergency funds during the accumulation phase of saving for retirement. Mr. Valenti responded that AARP does support and promote saving up an emergency fund as part of financial wellness. He

referenced recent studies that indicate a significant percentage of U.S. households would be unable to handle an unexpected \$400 expense out of savings. He said that AARP believes everyone should save for an emergency fund.

b. IRI

Commissioner Taylor asked Chelsea Crucitti (Insured Retirement Institute—IRI) and Frank O'Connor (IRI) to give their presentations. Ms. Crucitti said there are two retirement crises: 1) a funding crisis; and 2) an income crisis. She said 79 baby boomers are near retirement. She said longevity is one of the reasons for the crisis. She said workers tend to overestimate how long they will work, and many retire sooner than they expected.

Ms. Crucitti said a retiree needs 85% of their income for 20 years for retirement. People do not take into account the cost of living in retirement, such as health care and long-term care (LTC). She said most Americans do not have a grasp on the costs of health care and LTC. She said most workers with 401(k) accounts do not have the knowledge on how to use their money. She said six in 10 baby boomers do not take any action or even review their 401(k) accounts. She said that many respond to the amounts in their 401(k) similar to big lottery winners and that without education and guidance, they tend to spend it all.

Ms. Crucitti said more information does not necessarily mean there will be a better outcome. She said education is needed in every stage of life. She said industry tries to be innovative on the type of products that can help the consumer toward planning for and living through retirement. She pointed out a regulatory barrier where nearly 45% do not have access to a traditional 401(k) account. She said consumers need the right educational tools.

Ms. Crucitti also said there should be agent education and said IRI is partnering with the National Council on Aging (NCOA) to help educate agents on retirement and how to discuss retirement with consumers. She said the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 (H.R. 1994) is an important legislative tool to help Americans. The Act would allow, among many provisions, more part-time workers to have the opportunity to participate in a 401(k) plan and would allow for multi-employer 401(k) plans. It would also require benefit statements provided to defined contribution plan participants to include a lifetime income disclosure at least once during any 12-month period

Mr. O'Connor said people cannot overstate the need for education. He said IRI's research shows that collectively all people know they have to save for the future, but they do not know what to do to get there nor what to do when they get there.

Mr. O'Connor cited research on millennials. He said 72% of millennials believe they will be set for retirement, whereas only 18% are concerned about retirement. However, 50% of those who are confident about the future are not saving and say they plan to do it later. Sixty-five percent are confident that they can save enough of their own income, and 55% said Social Security will provide enough along with savings.

Commissioner Taylor asked when retirement education should start. Mr. O'Connor said basic financial literacy should begin in high school or entry into college. He said additional education is needed, such as at a first job. He said first-time employees need more than just being handed a 401(k) without some education about how it works and how to use it best for their needs.

Mr. O'Connor gave an example of a person who is moving from a large employer to a small employer and what to do with the 401(k) with the large employer. He said without proper education, that person may not know that it may be better to keep the 401(k) with the large employer.

Commissioner Taylor asked about producer education. Mr. O'Connor said not all agents or producers work in annuities, and conversely annuities are not right for everyone. He said producers need to be well-versed in all products for the right client. Ms. Sellmeyer asked when the IRI research will be available. Mr. O'Connor said it should be published next month.

Mr. Thaisz asked about the research on the hesitation by Americans of converting lump sums into annual income. Mr. O'Connor said their research shows there is some psychological barrier with retirees about taking their lump sum amount of money that they have saved and converting it into long-term annual income. He said there is no quick fix and that it is unclear how to change this barrier.

Jason Berkowitz (IRI) pointed out that the SECURE Act could help with that hesitation. He said this legislation would expand and preserve opportunities to save for retirement and help savers make more informed decisions about their retirement finances.

Brenda J. Cude (University of Georgia) said it is important for the Working Group to look at what is happening now in the area of education. She said that in order to move forward, it is important to know and understand what is being done currently. Karrol Kitt (The University of Texas at Austin) said she would like to participate in that discussion.

Having no further business, the Retirement Security (A) Working Group adjourned.

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AGENDA ITEM #3f Materials Pending
Life Actuarial Task Force Summary Report

AGENDA ITEM #4

**Discuss CEJ Letter on Life Insurance and
Annuities (A) Committee's 2020 Charges**



Comments of the Center for Economic Justice
To the NAIC Life Insurance and Annuity (A) Committee
Regarding Proposed 2020 Charges
October 31, 2019

The Center for Economic Justice writes to recommend the following changes to the proposed 2020 charges for the A Committee:

1. The **Life Insurance and Annuities (A) Committee** will:
 - A. Monitor the activities of the Life Actuarial (A) Task Force.
2. The **Accelerated Underwriting (A) Working Group** will:
 - A. Consider the use of external data and data analytics in accelerated life underwriting, including consideration of the ongoing work of the Life Actuarial (A) Task Force on the issue and, if appropriate, drafting guidance for the states.
3. The **Life Insurance and Annuity Illustrations**~~Annuity Disclosure~~ (A) Working Group will review the NAIC Life Insurance Disclosure, Life Insurance Illustration, Annuity Disclosure and Advertisement of Life Insurance and Annuity models and develop the key content and principles for illustrating the operation of the insurance or contract, including, but not limited to:
 - A. Ensure consistency between the Life Insurance Disclosure and Life Insurance Illustration models and advise if the models should be combined;
 - B. Ensure consistency between the Life Insurance Illustration and Annuity Disclosure Model for approaches to illustration of indexed products;
 - C. Develop key content and principles for illustrations to improve consumer protection and consumer comprehension of products, including but not limited to exploring recommendations for disclosure for IUL from the IUL subgroup/LATF; and
 - ~~B-D.~~ Identify major consumer protection concerns with life insurance and annuity advertising;
- 3.4. The **Annuity Suitability (A) Working Group** will:
 - A. Review and revise, as necessary, the *Suitability in Annuity Transactions Model Regulation* (#275).
 - B. Consider how to promote greater uniformity across NAIC-member jurisdictions.

4.5. The Life Insurance Policy Overview Illustration Issues (A) Working Group will:

- A. Develop a policy overview document to replace the policy summary in the Life Insurance Disclosure Model Regulation to provide a comparative shopping tool for consumers that briefly identifies the key features of the life insurance product, including consideration of design, format and methods of delivery to and access by consumers consistent with the purposes of the model regulation. Explore how the narrative summary required by Section 7B of the Life Insurance Illustrations Model Regulation (#582) and the policy summary required by Section 5A(2) of the Life Insurance Disclosure Model Regulation (#580) can be enhanced to promote consumer readability and understandability of these life insurance policy summaries, including how they are designed, formatted and accessed by consumers.

5.6. The Life Insurance Online Guide (A) Working Group will:

- A. Develop an online resource on life insurance, including the evaluation of existing content on the NAIC website, to be published digitally for the benefit of the public.

6.7. The Retirement Security (A) Working Group will:

Explore ways to promote retirement security consistent with the NAIC's continuing "Retirement Security Initiative."

Discussion and Rationale

The A Committee currently has four work streams related to life insurance and annuity disclosures and illustrations (not including the proposed new disclosures for the Annuity Suitability Model Regulation in the Annuity Suitability Working Group). These important work streams are not coordinating on key concepts and principles. The purpose of the proposed revised charges is to better describe the work of the current Life Illustrations working group and, more importantly, to address the dire situation with the current state of life insurance and annuity illustration disclosures for consumers.

CEJ recommends that the current Life Illustrations Working Group be renamed to more accurately reflect the decisions of the A Committee regarding the work product of this working group – a work product that is unrelated to illustrations. We provide background and detailed discussion regarding this proposed charge following the discussion of the need for the proposed charge to review illustrations more broadly.

New Life Insurance and Annuity Illustration Working Group

CEJ also recommends – and cannot stress enough the urgency of – a working group to address the sorry state of life insurance and annuity illustrations and the related harm to consumers. One of the three legs of the NAIC Retirement Security Initiative is consumer education. Yet, current NAIC model regulations regarding life insurance and annuity illustrations and advertising permit – and in some cases, require – misleading, confusing and/or deceptive information be provided to consumers in the form of illustrations.

While the work of the current LIIWG is excellent – the summary overview of key product features could help consumers – the working group is not addressing any of the problems with illustrations. Similarly, the Annuity Disclosure and IUL groups are tweaking models that are fundamentally flawed and which take diametrically-opposed approaches to illustrations. While both working groups recognize the larger problems and issues with illustrations, each working group has a very narrow charge that prevents response to the larger problems or coordination with one another.

One major problem is that the approaches to illustrations for life insurance and annuities – particularly for indexed products – are radically inconsistent even for products that operate in a similar fashion. Annuity illustrations requirements don't cap crediting rates, so insurers turn to bespoke indexes created by investment banks by data-mining historical experience to falsely present potential future earnings. But, the annuity illustration at least requires a best and worst ten year scenario in an effort to get at sequence of return risk. And for FIAs, the use of bespoke indices has created huge conflicts of interest because the providers of the indexes (investment banks) may also be providing the hedging programs to the insurer licensing the index.

In contrast, IUL illustrations cap the crediting rate, so indexes other than the S&P are rare, but AG 49 has encouraged the type of products that game the provisions of AG 49. AG 49 was created to stop the use of unrealistic crediting rates that produced unrealistic accumulation values. But, insurers turned to new product features – multipliers and bonuses – with the result that despite lower crediting rates and significantly higher expenses, accumulation values have increased in comparison to pre-AG 49 products. The insurers have taken a product that purports to eliminate downside risk and added that very downside risk with asset charges.

In addition to the use of multipliers and bonuses in IUL products, IUL illustrations also differ from indexed annuity illustrations because of the absence in the IUL illustration requirements of any disclosure of sequence of return risk. IUL illustrations show monotonic returns every year – with the result that loans, which can be illustrated at a lower cost than the crediting rate, are illustrated as cash withdrawals that cost the policyholder nothing. One result of IUL product designs and illustrations is that a significant portion – perhaps the majority – of IUL sales is premium-financed.

The discussions at the IUL subgroup regarding revisions to AG49 also support the creation of the proposed Life Insurance and Annuity Illustration Working Group. The subgroup solicited comments from interested parties for suggestions how to address the problems with current IUL illustrations. Industry stakeholders largely agreed that the current AG49 was not stopping unrealistic illustrations and, importantly, was not providing consumers with critical information regarding risk and return of products promising higher accumulation in exchange for additional fees. Industry comments asked the IUL subgroup to add new disclosures¹

¹ For example, Lincoln Financial Group, National Life Group, Pacific Life and Transamerica jointly recommended requiring a mandatory breakout of charges on illustrations and requiring consumers receive clear and concise information on: (1) the potential impact on accumulated values of index volatility; and (2) downside risks of the product, including any multiplier. Securian Financial wrote “Securian Financial believes in transparency for the consumer and the advisor; without transparency, there cannot be understanding. Today, the way the industry

The state of illustrations today is far worse than in 2015 (see discussion below) and the NAIC models create diametrically-opposed approaches for illustration of indexed life insurance and indexed annuities despite the fact that the indexed products have more similarities than differences for purposes of illustration.

Our proposed charges will – appropriately – end the work of the Annuity Disclosure Working Group. The working group has been worked very diligently to address one issue regarding annuity illustrations – illustrating products tied to indexes in existence for less than ten years. As noted above, this concept represents a contradiction to the AG 49 approach for IUL which seeks to stop the use of data-mined indexes to produce inflated and unrealistic future projections based on cherry-picked historical experience. The issue of how long an index must be in existence before it can be used for illustrations is a key issue that needs to be considered as part of a holistic look at illustrations for both life and annuity indexed products.

Finally, advances in understanding of consumer biases regarding financial services products and of design of consumer disclosures to empower consumers requires a thorough review of the current illustration regime. In support of this last point, we attach a very recent joint report by the financial service regulators in Australia and the Netherlands,

Life Insurance Policy Overview Working Group

The history of the Life Insurance Illustrations Working is relevant for understanding both why the current LIIWG needs a new name and better charge and why a new Life Insurance and Annuity Illustration Working Group with a broad charge is needed. The current LIIWG was created in 2015 to address concerns with illustrations, but the charge was limited to avoid a broader look at problems with illustrations. The minutes of November 2015 Life Insurance and Annuities (A) Committee state:

Commissioner Gerhart explained that the American Academy of Actuaries (Academy) wrote a letter suggesting expansion of the Working Group’s charge to include a review of the *Life Insurance Buyer’s Guide* (Buyer’s Guide). He said the American Council of Life Insurers (ACLI) followed up with a letter stating that it did not oppose the addition, but pointed out that the Committee itself already has an existing charge to revise the Buyer’s Guide, and the addition of this task to the Working Group might slow down its ability to accomplish the current charge.

Birny Birnbaum (Center for Economic Justice—CEJ) said that although Model #582 may be uniformly adopted by the states, that does not mean it translates into uniform illustrations provided to consumers. He said one reason for this is that Model #582 is out-of-date and does not reflect new product designs. It also does not reflect consumers’ use of technology to access information. Mr. Birnbaum also reminded the Committee of the illustration issues that resulted in the development of *Actuarial Guideline XLIX—The Application of the Life Insurance Illustrations Model Regulation to Policies with Index-*

illustrates some product designs lacks the necessary transparency for consumers and advisors to understand how the product performs and the associated risks.” Securian proposed a number of new, additional disclosures to accompany the illustration.

Based Interest (AG 49) and broader issues with illustrations. He also expressed support for the Committee revising the *Life Insurance Buyer's Guide*.

Mr. Regalbuto expressed support for opening Model #582 to look at issues related to AG 49. Mr. Robleto asked if appointing a new working group to look at the narrative summary provision in Model #582 and the policy summary provision in Model #580 addressed the Committee's commitment to level the playing field among insurers. Commissioner McPeak said addressing that issue is still in progress.

The new working group did solicit and review examples of then-current narrative summaries and policy summaries in 2016. The examples submitted by the ACLI showed wildly different formats, lengths and content of the documents across insurers and even across the same category of products. The industry practice was shown to be a document that combined the requirements of the policy summary and narrative summary of the two models without distinction – industry was unable to identify a specific policy summary document.

The working group decided that the best approach would be to create a new, simpler document – called the Policy Overview – to replace the policy summary to fulfill the charge of the working group. The working group presented this approach to the parent Life (A) Committee at the August 27, 2016 Committee meeting and received the Committee's support.

Although the working group has not completed its charge, significant progress and key insights have been made. First, the policy summary (of the disclosure model) and the narrative summary (of the illustrations model) serve different purposes. The policy summary (to be replaced by the policy overview) describes key features of the life insurance product. The narrative summary explains the illustration.

Second, the life insurance disclosure model includes a “mini-illustration” for products not marketed with an illustration. The model states,

“The insurer shall provide a policy summary to prospective purchasers where the insurer has identified the policy form as one that will not be marketed with an illustration. The policy summary shall show guarantees only. It shall consist of a separate document with all required information set out in a manner that does not minimize or render any portion of the summary obscure.”

The working group recognized that this portion of the policy summary should be split out from the key feature portion of the policy summary into two documents – the new policy overview and a statement of guaranteed premium and benefits.

Third, based on the recognition of the interaction between the illustrations and the disclosure model, the group affirmed that the policy overview would be provided with all life insurance products, whether marketed with an illustration or not – a decision consistent with the purpose of the disclosures model whose application is not limited to products not marketed with an illustration.

Fourth, the timing of delivery of the policy summary (now overview) and buyer's guide in the disclosure model is inconsistent with the purpose of the model. The purpose of the model is

To require insurers to deliver to purchasers of life insurance information that will improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs and improve the buyer's understanding of the basic features of the policy that has been purchased or is under consideration.

Yet, the delivery of the policy overview – now designed to provide a brief summary of the key features of the product – and the buyer's guide is not required prior to the purchase in the model. Consequently, key information designed to help a consumer shop for life insurance is not delivered until after the policy has been purchased. While there may have been some justification for this approach when the policy summary included information available only after the policy was issued or in a period in which document delivery was only by paper, those reasons are no longer valid and clearly undermine the purpose of the model and the disclosures.

While the Life Illustrations Working Group has been diligent, despite repeated efforts by the ACLI to derail the working group with false claims of "exceeding the working group's charges," two key issues limit the working group's efforts and need to be resolved. The first issue is the timing of delivery of the policy overview and the buyer's guide. Industry is adamant that there should be no change from the current requirement that permits delivery only after the policy is purchased. If this delivery provision remains, the purpose of the model, the policy overview and the buyer's guide are undermined. Second, the disclosures model and the illustrations model are intimately related because certain disclosures are required if a product is not marketed with an illustration, certain disclosures are required if a product is marketed with an illustration and certain disclosures are required regardless of whether the product is marketed with an illustration. Consequently, there is a need to take a holistic look at the two models for consistency and efficiency and we suggest that this be one of the charges for the proposed new Life Insurance and Annuity Illustration Working Group.

Thank you for your consideration.

Key Findings from “Disclosure: Why it shouldn’t be the default”

Prepared by the Dutch Authority for the Financial Markets

and the Australia Securities and Investments Commission:

Financial services disclosure has traditionally been assumed to inform us (as consumers), help us make ‘good’ financial decisions, and drive competition.

This report focuses on the real-world context in which disclosure operates. It shows that, and explains why, disclosure and warnings can be less effective than expected, or even ineffective, in influencing consumer behaviour. In some instances it shows that disclosure and warnings can backfire, contributing to consumer harm.

The report is a joint publication by the Australian Securities and Investments Commission (ASIC) and the Dutch Authority for Financial Markets (AFM). Both of these regulators have, over a number of years, identified limitations to disclosure in their respective retail financial services markets.¹ Although the Australian and the Dutch financial markets and regulatory regimes differ, there is also much common ground.

Case studies in disclosure limitations

The report explores the limits of disclosure, using case studies from ASIC, the AFM and other relevant sources as evidence. These case studies are drawn from the full range of financial products and services in different financial markets, and include all forms of disclosure.

As the case studies are specific to products and contexts, the findings from each are not generalisable. However, together they show how overloaded the expectations on disclosure and consumers can be; and why firms providing mandatory information does not necessarily result in ‘informed consumers’ and often does not correlate with good consumer outcomes. Disclosure is necessary, but not sufficient.

Why? Because:

Disclosure does not solve the complexity in financial services markets

Disclosure cannot solve complexity that is inherent in products and processes. Simplifying disclosure, for example, does not reduce the underlying complexity in financial products and services. Nor does it ease the contextual and emotional dimensions of financial decision making, both at the point of purchase and over time.

Disclosure must compete for consumer attention

We are constantly saturated with competing attempts to capture our attention and influence our decisions. Many firms have the commercial opportunity and means to effectively attract, distract and influence us; but regulators, and the disclosures they mandate, generally do not. Firms can also work around or undermine disclosure requirements that, once set, are generally slow to change.

One size does not fit all – the effects of disclosure are different from person to person and situation to situation

Like other forms of regulation, mandated disclosure requirements are often ‘one size fits all’ interventions – yet people and contexts differ and shift. It is hard to predict the individual and context-specific differences in how we will behave, make decisions, and engage with and process information.

In the real world, disclosure can backfire in unexpected ways

At worst, disclosure creates unintended detrimental outcomes for some consumers – in effect contributing to consumer harm (e.g. by increasing rather than decreasing trust in conflicted advisers, and decreasing rather than increasing credit card repayments). Ongoing monitoring of disclosure is needed because of these unexpected effects.

A warning about warnings

There is emerging evidence from financial services regulators about the limitations of the effectiveness of warnings that firms have to display about the risks and features of certain products and services. There is, for instance, some evidence of the effectiveness of warnings on our understanding of the risks associated with products, and in encouraging us to avoid unsuitable or harmful products.

Warnings are not a cure-all for problems in financial

AGENDA ITEM #5
Hear an Update from the IIPRC
No Materials

AGENDA ITEM #6

Any Other Matters brought before the Committee