

Draft: 11/25/24

Annuity Suitability (A) Working Group
Denver, Colorado
November 17, 2024

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met in Denver, CO, Nov. 17, 2024. The following Working Group members participated: Doug Ommen, Chair (IA); Lauren Van Buren, Vice Chair (WI); Jimmy Gunn (AL); Jodi Lerner (CA); Sally Frechette (DE); Shannon Hohl (ID); Craig VanAalst (KS); Renee Campbell (MI); Maggie Reinert (NE); Keith Nyhan and Michelle Heaton (NH); Daniel Bradford (OH); Andrew Schallhorn (OK); and Matt Gendron (RI). Also, participating were: Chris Heisler (IL); Nour Benchaaboun (MD); and Travis Jordan (SD).

1. Discussed the Chair Draft Safe Harbor Guidance Document

Commissioner Ommen said the purpose of this meeting is for the Working Group to discuss the comments received by the Nov. 8 public comment deadline on the chair's draft safe harbor guidance document (Attachment ?-A) on the safe harbor/comparable standards provision in the revised *Suitability in Annuity Transactions Model Regulation* (#275), which added a best interest standard of conduct for insurers and producers. He said the Working Group received comments from the Joint Trades—in a joint comment submission from the Insured Retirement Institute (IRI), the American Council of Life Insurers (ACLI), the National Association of Insurance and Financial Advisers (NAIFA), the Committee of Annuity Insurers (CAI), the Financial Services Institute (FSI), the Indexed Annuity Leadership Council (IALC), the National Association for Fixed Annuities (NAFA), Finseca, the Securities Industry and Financial Markets Association (SIFMA), and the Institute for Portfolio Alternatives (IPA)—and the Federation of Americans for Consumer Choice (FACC), Brenda J. Cude (NAIC consumer representative), and the Washington State Office of the Insurance Commissioner.

Sara Wood (IRI) outlined the Joint Trades' general recommendations and key concerns on the draft guidance included its comment letter. She said the Joint Trades included in the comments a chart outlining the different scenarios under which insurers can comply with their supervisory obligations and a redline, track version of the draft guidance providing suggested revisions and comments for the Working Group's consideration.

Wood highlighted the four main themes the Joint Trades' comment letter includes: 1) the draft guidance should provide greater clarity as to the distinctions between an insurer's responsibilities under the safe harbor and the provision that permits insurers to contract with third parties to perform the insurer's supervisory obligations and clarity on how insurers can satisfy their obligations under Section 6C(1) of Model #275 in either scenario; 2) the draft guidance should make clear that insurers do not need to separately determine compliance with a "comparable standard," as defined under the model matches the specific terms and obligations under the model; 3) the draft guidance should make it clear that insurers reviewing recommendations falling under the safe harbor can rely on screening system, as allowed under the model; and 4) the draft guidance should provide adequate flexibility for companies to develop compliance programs that meet their particular business models and circumstances.

Wood noted that the draft guidance appears to suggest that insurers must review the policies and procedures of their third-party distributors, but Model #275 does not include such an explicit requirement. She said the Joint Trades suggest the draft guidance include alternatives, either individually or collectively, that would achieve the same result as a direct review of policies and procedures such as interviews with the distributor or the receipt of a certification. She said the Joint Trades envision such a certification could be crafted to provide strong assurances,

specific representations, and legal protections in lieu of a generic certification of compliance with all applicable requirements.

Gendron expressed concern about an insurer relying on a certification from its third-party distributors to satisfy its supervisory obligations. He asked how an insurer would know if the third-party distributor is in compliance with the model's requirements if the insurer does not review the distributor's policies and procedures. Wood acknowledged that a review of a distributor's policies and procedures is one way to satisfy an insurer's supervisory obligations, but she noted that some insurers conduct verbal interviews with the distributor, which provides documentation. She said certifications could be a component as well. Wood noted that what the Joint Trades are seeking is flexibility depending on the insurer's relationship with the third-party distributor.

Gendron pointed out the Joint Trades' suggestion to delete the specific examples of the information or data the draft guidance suggests insurers share with the supervising entity to ensure the entity has as much information as possible in making supervisory decisions. Wood said the Joint Trades suggest deleting this language because some of its members have suggested that different data points could be provided to achieve the same goal. She also said that if the language remained, the Joint Trades would like the Working Group to clarify it to ensure the examples are illustrative. She said insurers do not want to get into the position where a state insurance regulator would take the list and use it as a checklist because some of the information or data might not be relevant to the particular relationship.

Commissioner Ommen acknowledged Wood's perspective that the third-party supervision component and the safe harbor are two different issues. He noted, however, that the supervision component in the safe harbor provision is part of the secondary review or transactional review process that the insurer is also required to do under Section 6C(1) of the model, but he believes this supervisory obligation could be satisfied through a third-party supervision assignment process. He asked Wood to describe how such a supervisory agreement would be incorporated into the framework of the contract if an insurer uses such an assignment process. Wood said some IRI members are building such arrangements into part of the contracting process, but she would have to contact her members to get specific information on how this is done.

Wayne Melman (ACLI) said that the ACLI, as a signatory to the Joint Trades comment letter, concurs with Wood's comments. He said the ACLI appreciates the Working Group's work on this issue and urges the Working Group to expose a revised draft guidance document that incorporates the Joint Trades' suggested revisions.

Commissioner Ommen said that following this meeting, the Working Group will reconvene the small drafting group that developed the initial draft guidance document to review the comments received and revise the draft accordingly. He said the Working Group anticipates distributing the revised draft guidance document for public comment and meeting in the future to discuss the comments received.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/A Cmte/Annuity Suitability WG/ASWG 11-17-24min.docx