2019 Fall National Meeting
Austin, Texas

ANNUITY SUITABILITY (A) WORKING GROUP
Saturday, December 7, 2019
9:00 – 10:00 a.m.
JW Marriott Austin—Lone Star Ballroom A-C—Level 3

ROLL CALL

Jillian Froment, Chair  Ohio  Renee Campbell  Michigan
Doug Ommen, Vice Chair  Iowa  Matt Holman  Nebraska
Jerry Workman/Steve Ostlund  Alabama  Keith Nyhan  New Hampshire
Jodi Lerner  California  TBD  New York
Fleur McKendell  Delaware  Andrew Schallhorn  Oklahoma
Dean L. Cameron  Idaho  Elizabeth Kelleher Dwyer  Rhode Island
Tate Flott/Shannon Lloyd  Kansas  Rachel Jade-Rice  Tennessee
Nour Benchaaboun  Maryland  Richard Wicka  Wisconsin

NAIC Support Staff: Jolie H. Matthews

AGENDA

1. Consider Adoption of its Nov. 5, Oct. 29, Oct. 15, Oct. 8, Sept. 17, July 29, July 23 and Summer National Meeting Minutes—Director Jillian Froment (OH)

2. Discuss Any Outstanding Working Group Issues—Director Jillian Froment (OH)

3. Discuss Any Other Matters Brought Before the Working Group—Director Jillian Froment (OH)

4. Adjournment

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Agenda Item #1

Consider Adoption of its Nov. 5, Oct. 29, Oct. 15, Oct. 8, Sept. 17, July 29, July 23 and Summer National Meeting Minutes

—Director Jillian Froment (OH)
Annuity Suitability (A) Working Group
Conference Call
November 5, 2019

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Nov. 5, 2019. The following Working Group members participated: Jillian Froment, Chair (OH); Doug Ommen, Vice Chair (IA); Jerry Workman and Steve Ostlund (AL); Jodi Lerner (CA); Fleur McKendell (DE); Weston Tredler (ID); Vicki Schmidt, Tate Flott and Shannon Lloyd (KS); Nour Benchaaboun (MD); Renee Campbell (MI); Matt Holman (NE); Keith Nyhan (NH); Andrew Schallhorn (OK); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Rachel Jrade-Rice (TN); and Richard Wicka (WI).

1. Continued its Discussion of the Comments Received on Proposed Revisions to Model #275

Director Froment reminded the Working Group of its goals for its June 20 meeting and its subsequent meetings, which is to develop a framework for revising the Suitability in Annuity Transactions Model Regulation (#275) to include a best interest standard of conduct that is more than the model’s current suitability standard, but not a fiduciary standard. She said that based on the developed framework and as discussed at the Working Group’s meeting at the Summer National Meeting, the Working Group’s technical drafting group met in September and developed a draft of proposed revisions to Model #275 (see NAIC Proceedings – Fall 2019, Life Insurance and Annuities (A) Committee, Attachment ?). She said that during the Working Group’s Sept. 17 conference call, the Working Group developed a Working Group draft of proposed revisions to Model #275 (see NAIC Proceedings – Fall 2019, Life Insurance and Annuities (A) Committee, Attachment ?) based on the technical drafting group’s draft and exposed it for a public comment period ending Sept. 30. She said the purpose of this conference call is for the Working Group to continue its section-by-section discussion of the comments received by the public comment deadline. She explained that the Working Group would begin its discussion with Section C—Disclosure Obligation, deferring discussion of the additional suggested revisions in Section 5 because those definitions involved the safe harbor provision in Section 6E. The Working Group would discuss those definitions as part of its discussion of that provision.

Director Froment also explained that the Working Group received additional suggested revisions on specific issues in response to the Working Group’s request for additional comment. She said those suggested revisions would be discussed at the appropriate time and would include discussion of outstanding issues, such as the proposed drafting note in Section 1B concerning the successor draft issue. Director Froment reminded the Working Group members and interested parties that only those suggested revisions having the support of a Working Group member and broad consensus from the Working Group would be considered for inclusion in the revised model.

a. Section 6C—Supervision System

Director Froment said the Joint Trades—in a joint comment submission from the American Council of Life Insurers (ACLI), the Committee of Annuity Insurers (CAI), the Financial Services Institute (FSI), the Indexed Annuity Leadership Council (IALC), the Insured Retirement Institute (IRI), the National Association for Fixed Annuities (NAFA), the National Association of Insurance and Financial Advisers (NAIFA) and the Association for Advanced Life Underwriting (AALU)—the Fixed Annuity Consumer Choice Campaign (FACC) and the Independent Insurance Agents & Brokers of America (IIABA) submitted comments on Section 6C—Supervision System.

Jason Berkowitz (IRI) said the Joint Trades suggest deleting Section 6C(1) because the substance of this paragraph is covered in other provisions in Section 6C. Birny Birnbaum (Center for Economic Justice—CEJ) disagreed with the Joint Trades’ reasoning for deleting Section 6C(1). There was no Working Group support for deleting Section 6C(1).

Robbie Meyer (ACLI) said the Joint Trades suggest technical revisions to Section 6C(2)’s lead-in paragraph to make it clear that an insurer’s supervision system only applies to the insurer’s annuity products. She said that in addition, the Joint Trades suggest adding language to Section 6C(2)(e) to make it clear an insurer is not required to warrant the producer is acting in the consumer’s best interest. Specifically, the Joint Trades suggest revising Section 6C(2)(e) as follows: “The insurer shall establish and maintain reasonable procedures to detect recommendations that where there is not a reasonable basis to determine the recommendation would effectively address the particular consumer’s financial situation, insurance needs and financial objectives are not in compliance with subsections A, B, D and E. This may include, but is not limited to, confirmation of the consumer’s consumer profile information, systematic customer surveys, interviews, confirmation letters and programs of

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internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming the consumer profile information after issuance or delivery of the annuity. An insurer is not required to warrant the producer is acting in the consumer’s best interest.” Commissioner Ommen asked how this revised language would apply when no recommendation is made.

Ms. Meyer said the Joint Trades also suggest deleting Section 6C(2)(f) in its entirety because when a producer is engaged in activities relating to the sale of other insurers’ products, an insurer does not have the requisite knowledge or control over the producer to gauge compliance with the disclosure requirements of Section 6A(2). There was no support from the Working Group for the Joint Trades’ suggested revisions to Section 6C(2)’s lead-in paragraph or Section 6C(2)(e) or deleting Section 6C(2)(f).

Wes Bissett (IIABA) discussed the IIABA’s suggestion to delete Section 6C(2)(h). He said Section 6C(2)(h) is not needed given the provisions of Section 6A. He also questioned if states could implement Section 6C(2)(h) by regulation. There was no support for the IIABA’s suggestion to delete Section 6C(2)(h).

Ms. Meyer discussed the Joint Trades’ suggested revisions to Section 6C(2)(h). She said the purpose of the suggested revisions is to make the provisions of Section 6C(2)(h) applicable to sales contests and other types of non-cash compensation based on the sales of specific annuities of the insurer. She said the Joint Trades suggest deleting the reference to “specific types of annuities” because of concerns that the language may be overly broad as applied in the context of annuities. She said the Joint Trades also have clarified that Section 6C(2)(h) only applies to the insurer because the insurer does not have control over the business of third-party entities. She said the Joint Trades’ additional suggested revisions clarify, consistent with the U.S. Securities and Exchange Commission’s (SEC) best interest regulation (Reg BI), that the requirements of Section 6C(2)(h): 1) do not apply to compensation practices based on total annuity products sold; 2) would not prevent the offering of proprietary products, placing material limitations on the menu of products or incentivizing the sale of such products through its compensation practices, as long as the incentive is not based on the sale of a specific annuity product of the insurer within a limited period of time; and 3) are not intended to prohibit the receipt of employee benefits by employees.

The Working Group discussed the Joint Trades’ suggested revisions to Section 6C(2)(h). Some Working Group members expressed support for some of the suggested revisions. After discussion, the Working Group agreed on the following language for Section 6C(2)(h), which accepts some of the Joint Trades’ suggested revisions: “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.”

Kim O’Brien (FACC) discussed the FACC’s suggested revisions for Section 6C(4). She said the FACC suggests revising Section 6C(4) to clarify an insurer’s scope of supervision for its producers by adding the following language: “nor is it required to include consideration of or comparison to options available to the producer or compensation related to those options other than annuities offered by the insurer.” The Working Group discussed the suggested language. After discussion, the Working Group agreed to add the suggested language with some modifications.

No comments were received on Section 6D—Prohibited Practices.

b. Section 6E—Safe Harbor

The Working Group next discussed Section 6E—Safe Harbor. Director Froment said the IRI, Nationwide and Jackson National Life Insurance Company (Jackson) submitted comments. She explained that the IRI had submitted revised comments on Section 6E expanding the provision’s safe harbor language to apply to all financial professionals, including broker-dealers, investment advisers and fiduciaries. Mr. Berkowitz said the IRI supports its initial suggested revisions to Section 6E, but the IRI believes the Working Group should consider expanding the safe harbor provisions to apply to all financial professionals. Drew Bowden (Jackson) expressed support for the IRI’s suggested revisions. He also said that if the Working Group accepts the revisions, it would address Jackson’s comments. Mr. Birnbaum, Mr. Bissett and Ms. O’Brien expressed concern with the safe harbor provisions.

Ms. Campbell said she believes the Working Group should consider the IRI’s proposal. Commissioner Ommen agreed. Mr. Gendron expressed caution with the proposal and whether it could require state insurance regulators to become experts on
securities. The Working Group discussed the proposal. After discussion, the Working Group decided to include the language in the revised draft and receive comments on it.

Director Froment said the Working Group does not need to discuss the additional suggested definitions in Section 5 related to the safe harbor provision because those additional suggested definitions are included in the IRI’s revised comments, which the Working Group agreed to include in the revised draft in order to receive comments on it.

c. Section 7—Producer Training

Director Froment said the Joint Trades submitted comments on Section 7B—Producer Training. Mr. Berkowitz said the Joint Trades suggest adding a new paragraph to Section 7B to account for producers who have had required training before the effective date of the revised model. Mr. Gendron asked if Mr. Berkowitz had had discussions with any continuing education (CE) providers on whether they could develop a course for producer training within the proposed six-month timeframe provided in the Joint Trades’ proposed language. Mr. Berkowitz said he spoke with one CE provider, which said it could meet the proposed six-month timeframe. Mr. Bissett said he believes CE providers would be challenged to develop a course and receive approval from state departments of insurance (DOI) within the proposed time frame. After discussion, the Working Group decided to add the language to the revised draft.

No comments were received on Section 9—Recordkeeping or Section 10—Effective Date.

d. Appendix A—Producer Relationship Disclosure Form and Appendix B—Consumer Refusal to Disclose All or Partial Consumer Profile Information Form

Director Froment said the Joint Trades had submitted comments on Appendix A—Producer Relationship Disclosure Form. The Working Group decided to defer discussion of the comments and have the Life Insurance and Annuities (A) Committee finalize the form language because the language in Section 6 related to the form has not been finalized. The Working Group agreed to take the same approach for Appendix B—Consumer Refusal to Disclose All or Partial Consumer Profile Information Form.

2. Discussed the Working Group Chair’s Requested Supplemental Comments

a. Section 5C—Definition of “Consumer Profile Information”

Mr. Berkowitz said the Joint Trades submitted supplemental comments on Section 5C—Definition of “Consumer Profile Information” in response to the Working Group’s discussion of the Joint Trades’ initial comments during its Oct. 8 conference call. He said that during that call, the Joint Trades had expressed concern about the uncertainty inherent in the addition of “including debts and other obligations” in Section 5C(3). He said that to address this concern, in its supplemental comments, the Joint Trades suggest adding “to the extent relevant to the recommendation” to the lead-in paragraph, and deleting “including debts and other obligations” in Section 5C(3) and adding that language to Section 5C(7). Some Working Group members questioned the value of adding the suggested language to the lead-in paragraph. After additional discussion, there was no Working Group support expressed for the Joint Trades’ suggested language.

b. Section 6A—Best Interest Obligations

Mr. Berkowitz said the Joint Trades submitted supplemental comments related to its initial comments discussed during the Working Group’s Oct. 15 conference call on the Joint Trades’ suggested language for Section 6A—Best Interest Obligations to prevent a producer’s or insurer’s recommendation being evaluated in hindsight based on things that may happen that are out of the producer’s or insurer’s control. He said the Working Group expressed concern with the Joint Trades’ initial suggested language to address the situation. He said to address the Working Group’s concern, the Joint Trades suggest adding the following language as a new paragraph in Section 6A: “Compliance with the obligation to act in the best interest of the consumer in this Section 6A and the obligations regarding care, disclosure, conflicts of interest and documentation in paragraphs (1) through (4) above shall be determined on the basis of the conduct of the producer at the time of the recommendation, and not on the basis of the actual financial performance of the recommended annuity (whether positive or negative) so long as the relevant facts and factors, including the reasonable range of possible outcomes in the performance of non-guaranteed elements of the annuity, were appropriately considered in light of the consumer’s financial situation, insurance
needs and financial objectives. Nothing contained herein will be deemed to impair or otherwise impact contractual guarantees included in a recommended annuity.” There was no Working Group support for the Joint Trades’ suggested language.

c. Section 6A(2)—Disclosure Obligation

Director Froment said that during the Working Group’s Oct. 29 conference call, the Working Group discussed suggested revisions to Section 6A(2)(a). Section 6A(2)(a) describes what information a producer must disclose to a consumer about the producer’s relationship with the consumer on a form substantially similar to the Producer Relationship Disclosure Form in Appendix A. She said the Working Group asked Mr. Gendron to develop language for the Working Group’s review. Mr. Gendron said his suggested revisions to Section 6A(2)(a) are derived in part from requirements for financial professionals selling securities. Ms. Meyer expressed concern generally with including a list and with the list including non-insurance products. Ms. O’Brien agreed with Ms. Meyer. After discussion, the Working Group agreed to add Mr. Gendron’s suggested language to Section 6A(2)(a) with some wordsmithing, non-substantive changes.

d. Section 6A—Additional Paragraph

Director Froment said that during the Working Group’s Oct. 29 conference call, the Working Group discussed placeholder language based on New York language, which would apply the model’s provisions to any producer who “materially participated” in the transaction. She said the Working Group requested Mr. Gendron develop language on this issue for the Working Group’s review. Mr. Gendron said the goal of his suggested language is to notify producers not directly involved in a recommendation of their potential liability if a producer 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.

The Working Group discussed Mr. Gendron’s suggested language. Mr. Birnbaum expressed opposition to the language. He said New York’s language is a lot clearer and more straightforward. Gary Sanders (NAIFA) said Mr. Gendron’s suggested language is better than New York’s language, but he said he is unclear on how the language provides additional protections to consumers. He said it could have a chilling effect. There was no opposition from Working Group members to adding the language. However, some Working Group members suggested the language is unnecessary given other provisions in the revised model.

3. Adopted the Revised Model and Exposed it for Comment

Director Froment said that during the Working Group’s Oct. 8 conference call, the Working Group discussed comments from the IIABA concerning the drafting note for Section 1—Purpose. The proposed drafting note states that for purposes of Section 989J of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), the revised Model #275 is a successor to the 2010 revisions, which added a suitability standard of conduct. Director Froment said the Working Group deferred discussion on the drafting note and asked the NAIC Legal Division to research whether the revised model would be considered a successor model to the 2010 revisions for purposes of Section 989J. She said the Legal Division most likely would consider the revised model to be a successor to the 2010 revisions. She said given this, she believes this is a policy issue for the Life Insurance and Annuities (A) Committee, the Executive (EX) Committee and Plenary to decide.

Mr. Gendron made a motion, seconded by Commissioner Ommen, to refer the draft to the Life Insurance and Annuities (A) Committee for its consideration. As part of the motion, it was noted that in sending the draft to the Life Insurance and Annuities (A) Committee, it does not mean that each Working Group member supports every provision in the draft, but that the Working Group has completed its work as directed by the Life Insurance and Annuities (A) Committee at the Spring National Meeting. The motion passed.

Commissioner Ommen said that as chair of the Life Insurance and Annuities (A) Committee, he is exposing the draft for a 21-day public comment period ending Nov. 26. He said the Life Insurance and Annuities (A) Committee will consider any comments received during its meeting at the Fall National Meeting.

Having no further business, the Annuity Suitability (A) Working Group adjourned.
Draft: 11/21/19

Annuity Suitability (A) Working Group
Conference Call
October 29, 2019

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Oct. 29, 2019. The following Working Group members participated: Jillian Froment, Chair (OH); Doug Ommen, Vice Chair (IA); Steve Ostlund (AL); Jodi Lerner (CA); Fleur McKendell (DE); Tate Flott (KS); Nour Benchaboun (MD); Renee Campbell (MI); Matt Holman (NE); Keith Nyhan (NH); James Regalbuto (NY); Andrew Schallhorn (OK); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Rachel Trade-Rice (TN); and Richard Wicka (WI).

1. Continued its Discussion of the Comments Received on Proposed Revisions to Model #275

Director Froment reminded the Working Group of its goal from its June 20 meeting and its subsequent meetings, which was to develop a framework for revising the Suitability in Annuity Transactions Model Regulation (#275) to include a best interest standard of conduct that is more than the model’s current suitability standard, but not a fiduciary standard. She said that based on the developed framework and as discussed at the Working Group’s meeting at the Summer National Meeting, the Working Group’s technical drafting group met in September and developed a draft of proposed revisions to Model #275 (see NAIC Proceedings – Fall 2019, Life Insurance and Annuities (A) Committee, Attachment ?). She said that during the Working Group’s Sept. 17 conference call, the Working Group developed a Working Group draft of proposed revisions to Model #275 (see NAIC Proceedings – Fall 2019, Life Insurance and Annuities (A) Committee, Attachment ?) based on the technical drafting group’s draft and exposed it for a public comment period ending Sept. 30. Director Froment said the purpose of this conference call is for the Working Group to continue its section-by-section discussion of the comments received by the public comment deadline. She explained that the Working Group would begin its discussion with Section 6A(2)—Disclosure Obligation, deferring discussion of the additional suggested revisions in Section 5 because those definitions involved the safe harbor provision in Section 6E. She said the Working Group would discuss those definitions as part of its discussion of that provision.

a. Section 6A(2)—Disclosure Obligation

Director Froment said the Joint Trades—in a joint comment submission from the American Council of Life Insurers (ACLI), the Committee of Annuity Insurers (CAI), the Financial Services Institute (FSI), the Indexed Annuity Leadership Council (IALC), the Insured Retirement Institute (IRI), the National Association for Fixed Annuities (NAIFA), the National Association of Insurance and Financial Advisers (NAIFA) and the Association for Advanced Life Underwriting (AALU)—and the Independent Insurance Agents & Brokers of America (IIABA) submitted comments on Section 6A(2)—Disclosure Obligation.

Before discussing the Joint Trades’ suggested revisions, Robbie Meyer (ACLI) pointed out that Section 6A(2)(a) references the defined term “non-cash compensation.” She reiterated the Joint Trades’ concern raised during the Working Group’s Oct. 8 conference call about the definition of “material conflict of interest” in Section 5I and the definition of “non-cash compensation” in Section 5J and its suggested revisions to exclude certain benefits from being considered non-cash compensation for purposes Section 6C(2)(h), which could prohibit producers from receiving these benefits if considered non-cash compensation. The Working Group discussed the suggested revisions, with some Working Group members noting the importance of Section 6C(2)(h) to discourage any of the types of benefits listed in the definition of “non-cash compensation” being tied to the sale of a particular annuity within a specified period of time. The Working Group decided to defer discussion of the issue until it discusses Section 6C(2)(h).

Jason Berkowitz (IRI) discussed the Joint Trades’ suggested revisions to Section 6A(2)(a) and Section 6A(2)(b) explaining that except for the suggestion to add a new item (v) to Section 6A(2)(a), the suggested revisions were technical and clarifying. Ms. Meyer said the Joint Trades suggest adding the new item (v) to Section 6A(2)(a) to require a producer or insurer to disclose any material of conflicts of interest to better align with the requirements under the U.S Securities and Exchange Commission’s (SEC) best interest final regulation (Reg BI). She said the Joint Trades suggest a conforming change to Appendix A, Producer Disclosure Form. Wes Bissett (IIABA) asked if the suggested revision to add a new (v) to Section 6A(2)(a) to require a producer to disclose material conflicts of interest would affect Section 6A(3)—Conflict of Interest Obligation. Jim Szostek (ACLI) explained that this provision concerns disclosure and that the ACLI believes this suggested revision would not affect Section 6A(3)’s provisions.
The Working Group discussed the Joint Trades’ suggested revisions. There was no support for the Joint Trades’ suggested revisions to Section 6A(2)(a)(iii) to restructure the language. The Working Group deferred making a decision on whether to add the new item (v) until it discusses Section 6A(3)—Conflict of Interest Obligation.

Mr. Berkowitz explained that the Joint Trades’ suggested revisions to Section 6A(2)(b) are intended to be technical and clarifying, such as specifying that the consumer would make the request to the producer to disclose additional information about the producer’s cash compensation, not a member of the general public. He said the other revisions are meant to address salaried employees who are not directly compensated for the sale of a particular annuity. The revisions would require such employees only to provide a description of general compensation practices relevant to the producer. Mr. Birnbaum expressed concern with the revisions. He suggested that if the Working Group accepted the suggested revision concerning the consumer requesting the information that the language also include the consumer’s authorized representative. The Working Group discussed the suggested revisions. After discussion, the Working Group decided to accept the Joint Trades’ suggested revisions concerning the consumer making the request, but there was no support to accept the Joint Trades’ suggested revisions concerning salaried employees.

Mr. Bissett discussed the IIABA’s suggestion to restructure item (ii) in Section 6A(2)(a) for clarity and remove the word “limitations.” The Working Group discussed the suggested revisions. Some Working Group members expressed concern that the IIABA’s restructured language was too vague with respect to what the producer would need to disclose concerning the products the producer is authorized and licensed to recommend or sell. Birny Birnbaum (Center for Economic Justice—CEJ) expressed concern that the IIABA’s restructured language is too limiting because it references only annuity and securities products. Some Working Group members expressed support for the IIABA’s efforts to provide more clarity, but they could not support the IIABA’s suggested revisions. After additional discussion, the Working Group asked Mr. Gendron to develop language to address the issue for the Working Group to discuss during its Nov. 5 conference call. The Working Group deferred discussion of the IIABA’s suggestion to add a new provision to Section 6A(2)(a) to require a producer to disclose a description of any material ownership interest the producer has in the insurer that would issue the recommended annuity until it discusses Section 6C(2)(h) and the definition of “material conflict of interest.”

b. Section 6A(3)—Conflict of Interest Obligation

Director Froment said the Joint Trades, the Fixed Annuity Consumer Choice Campaign (FACC) and the IIABA submitted comments on Section 6A(3)—Conflict of Interest Obligation. Mr. Berkowitz said the Joint Trades’ suggested revisions are intended to be clarifying. The Working Group discussed the suggested revisions. After discussion, no Working Group member expressed support for accepting the suggested revisions.

Kim O’Brien (FACC) said the FACC suggests striking “avoid or otherwise reasonably manage” and replacing it with a disclosure requirement because to “reasonably manage” is to disclose. Mr. Bissett explained the IIABA’s suggestion to delete Section 6A(3). He said the language “material conflict” is ambiguous and asked what a producer is supposed to do if a “material conflict” exists. He said the FACC’s suggested revision addresses this issue. He expressed support for a disclosure-based approach. Mr. Szostek expressed support for the FACC’s suggested revision.

The Working Group discussed Section 6A(3)’s language, the definition of “material conflict of interest” in Section 5I and whether material conflicts of interest should be “managed and disclosed” or “managed or disclosed.” Commissioner Ommen suggested revising Section 6A(3) to require a producer to “identify and avoid or reasonably manage and disclose material conflicts of interest.” After discussion, the Working Group agreed to accept Commissioner Ommen’s suggested revision.

c. Section 6A(4)—Documentation Obligation

Director Froment said the Joint Trades and the FACC submitted comments on Section 6A(4)—Documentation Obligation. Mr. Berkowitz said the Joint Trades’ suggested revisions are intended to be clarifying. The Working Group discussed the suggested revisions. After discussion, no Working Group member expressed support for accepting the suggested revisions. Ms. O’Brien said the FACC suggests adding language to Section 6A(4)(a) requiring a producer to make a written “reasonable summary” record of any recommendation and the basis for the recommendation. She said the FACC’s suggested revision is based on a provision in New York’s best interest regulation. After discussion, no Working Group member expressed support for accepting the suggested revision.

The Working Group next discussed the comments received on a proposed provision in the revised model suggested by New York. The Working Group had requested specific comments on whether such a provision should be included in the revised...
model. Mr. Berkowitz said the Joint Trades suggest not including this provision, which would apply the model’s provisions to any producer who “materially participated” in the transaction. He said such language is too vague and as such would create too much uncertainty in the marketplace as to when a producer is considered to have “materially participated” in a transaction and, therefore, subject to the model’s provisions. He said the model includes supervision requirements that would address any issues this proposed provision is intended to address, such as ensuring that more senior producers were not shielding themselves from responsibility by using junior producers to technically make a recommendation. He said the Joint Trades believe this provision is not needed and urged the Working Group not to include it in the revised model.

The Working Group discussed the Joint Trades’ comments and the proposed revisions. Mr. Gendron viewed the proposed language as fair warning to producers as to how state insurance regulators will interpret the model’s provisions and its application. Mr. Regalbuto said New York has a host of examples it could provide where this has been an issue, which is why its best interest regulation includes such a provision. Mr. Berkowitz acknowledged Mr. Gendron’s comments. He said he believes these issues are already addressed in the model. He said his concern is that the language could be interpreted and applied to any person who had any involvement in the transaction. Director Froment reminded the Working Group that this provision is not in the revised model. As such, a Working Group member would have to express support for adding it. The Working Group discussed what “materially participated” means. After additional discussion, the Working Group requested that Mr. Gendron work on language for the Working Group to discuss during its Nov. 5 conference call.

d. Section 6B—Transactions Not Based on a Recommendation

Director Froment said the Joint Trades submitted comments on Section 6B—Transactions Not Based on a Recommendation. Mr. Berkowitz said the revised draft defines “producer” to include an insurer where no producer is involved in Section 5K. He said that the revised definition works throughout the model except for Section 6B. He said in Section 6B, the insurer is the supervising entity. He said the Joint Trades’ suggested revision addresses this issue. Mr. Birnbaum said the Joint Trades are conflating two issues. He said Section 6B is intended to limit a producer’s obligation, not the insurer’s obligation as a supervising entity. There was no Working Group support for accepting the Joint Trades’ suggested revision.

e. Section 8—Compliance Mitigation; Penalties

Director Froment said the Joint Trades submitted comments on Section 8—Compliance Mitigation; Penalties. Mr. Berkowitz said the Joint Trades suggest revising Section 8 for consistency with the model’s insurer supervision responsibilities, which require an insurer to supervise transactions related to the insurer’s own annuity products. There was no Working Group support for accepting the Joint Trades’ suggested revision.

Having no further business, the Annuity Suitability (A) Working Group adjourned.
Draft: 11/11/19

Annuity Suitability (A) Working Group
Conference Call
October 15, 2019

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Oct. 15, 2019. The following Working Group members participated: Jillian Froment, Chair (OH); Doug Ommen, Vice Chair (IA); Steve Ostlund (AL); Jodi Lerner (CA); Fleur McKendell (DE); Karl Fromm (ID); Tate Flott and Shannon Lloyd (KS); Nour Benchaaboun (MD); Renee Campbell (MI); Matt Holman (NE); Keith Nyhan (NH); Andrew Schallhorn (OK); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Rachel Jraide-Rice (TN); and Richard Wicka (WI).

1. Continued its Discussion of the Comments Received on Proposed Revisions to Model #275

Director Froment reminded the Working Group of its goal for its June 20 meeting and its subsequent meetings, which was to develop a framework for revising the Suitability in Annuity Transactions Model Regulation (#275) to include a best interest standard of conduct that is more than the model’s current suitability standard, but not a fiduciary standard. She said that based on the developed framework and as discussed during the Working Group’s meeting at the Summer National Meeting, the Working Group’s technical drafting group met in September and developed a draft of proposed revisions to Model #275 (see NAIC Proceedings – Fall 2019, Life Insurance and Annuities (A) Committee, Attachment ?). She said that during the Working Group’s Sept. 17 conference call, the Working Group developed a Working Group draft of proposed revisions to Model #275 (see NAIC Proceedings – Fall 2019, Life Insurance and Annuities (A) Committee, Attachment ?) based on the technical drafting group’s draft and exposed it for a public comment period ending Sept. 30. She said the purpose of this conference call is for the Working Group to continue its section-by-section discussion of the comments received by the public comment deadline. She explained that the Working Group would begin its discussion with Section 6—Duties of Insurers and Producers, deferring discussion of the additional suggested revisions in Section 5 because those definitions involved the safe harbor provision in Section 6. The Working Group would discuss those definitions as part of its discussion of that provision.

a. Section 6A—Best Interest Obligations

Director Froment said the Joint Trades—in a joint comment submission from the American Council of Life Insurers (ACLI), the Committee of Annuity Insurers (CAI), the Financial Services Institute (FSI), the Indexed Annuity Leadership Council (IALC), the Insured Retirement Institute (IRI), the National Association for Fixed Annuities (NAFA), the National Association of Insurance and Financial Advisers (NAIFA), and the Association for Advanced Life Underwriting (AALU)—the Fixed Annuity Consumer Choice Campaign (FACC) and the Independent Insurance Agents & Brokers of America (IIABA) submitted comments on the lead-in paragraph for Section 6A—Best Interest Obligations.

Robbie Meyer (ACLI) said the Joint Trades suggest adding the following language at the end of Section 6A’s lead-in paragraph: “independent of the performance of the recommended annuity.” She said the Joint Trades suggest this language to avoid a producer’s or insurer’s recommendation being evaluated in hindsight based on things that may happen that are out of the producer’s or insurer’s control. The Working Group discussed the suggested language and after discussion decided that if this issue needs to be addresses, the Section 6A lead-in paragraph is not the appropriate place to address it. Director Froment suggested the Joint Trades submit revised language for the Working Group to consider at the appropriate time during its later discussions.

Kim O’Brien (FACC) said the FACC suggests deleting the references to the best interest standard of conduct because the FACC thinks the best interest standards is undefined, ambiguous and subjective and, as such, will lead to litigation. She said the FACC has suggested language for Section 6A(1)—Care Obligation it believes is a better approach. Mr. Bissett noted that the IIABA has concerns with the best interest standard of conduct similar to the FACC’s concerns. The Working Group discussed the FACC’s suggested revision. During the discussion, Working Group members reiterated their support for the best interest standard of conduct reflected in the revisions and noted provisions in the proposed revisions that address the FACC’s and the IIABA’s concerns, particularly the second sentence in Section 6A’s lead-in paragraph. The Working Group also discussed revising Section 6A to clarify what a producer or an insurer needs to do to satisfy the best interest standard of conduct. Director Froment suggested revising the second sentence in Section 6A as follows: “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.” After discussion, the Working Group agreed to include the suggested language in the revised draft.

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Attachment ?
Life Insurance and Annuities (A) Committee
12/8/19
b. **Section 6A(1)—Care Obligation**

Director Froment said the Joint Trades, the FACC and the IIABA submitted comments on Section 6A(1). Ms. Meyer said the Joint Trades suggest several revisions to Section 6A(1) to clarify its language. She said the Joint Trades suggest deleting “over the life of the contract” in Section 6A(1)(a)(iii) to address a concern that the language could be interpreted as requiring an ongoing duty to the consumer. The Joint Trades also suggest adding “provided to the producer” to Section 6A(1)(a)(iii) to make it clear that producers can only evaluate the information they actually receive from a consumer. She said the Joint Trades suggest deleting the word “substantially” for consistency with other provisions in the revised model and changing “60” months to “36” months to bring the time frame closer in line to the current replacement requirements in most states.

The Working Group discussed the Joint Trades’ suggested revisions. Some Working Group members expressed concern with adding “provided by the consumer” because producers have an obligation to be aware of a consumer’s actual circumstances, not just what is included in the consumer profile information form, particularly in situations that could involve a vulnerable adult. With respect to the “over the life the contract” suggested revision, some Working Group members noted that the language was meant to address those consumers with long-term concerns and seeking to purchase an annuity for retirement purposes. Ms. Meyer said she believes the language requiring a producer or insurer to recommend a product that “effectively addresses the consumer’s financial situation, insurance needs and financial objectives” applies to both a consumer’s short-term and long-term concerns. Ms. O’Brien said the FACC has the same concerns with the language “over the life of the product.” Birny Birnbaum (Center for Economic Justice—CEJ) expressed concerns with the Joint Trades’ comments. Gary Sanders (NAIFA) suggested the Working Group consider adding the language “available to the producer” to Section 6A(1)(a)(iii) if the Working Group is uncomfortable with the Joint Trades’ suggested language. Jason Berkowitz (IRI) expressed support for Mr. Sanders’ suggested language. There was no Working Group support for the Joint Trades’ suggested revisions or Mr. Sanders’ suggested alternative language.

Ms. O’Brien discussed the FACC’s suggested revision to add a new provision to Section 6A(1) to require that a producer’s recommendation can be compared only to other producers as opposed to being compared to investment advisers or possibly higher-level fiduciaries, such as trust officers or plan sponsors under the federal Employee Retirement Income Security Act of 1974 (ERISA) for compliance and enforcement purposes. She said that if this language is not included in the revised model, it makes the proposed best interest standard of conduct even more subjective and approaches a kind of strict liability depending on how state insurance regulators or the courts decide to enforce a best interest standard of conduct with ill-defined requirements. Ms. O’Brien also suggested revising Section 6A(1)(a)(iv) to require a producer to communicate “a reasonable summary of” the basis or bases of the recommendation. The Working Group discussed the FACC’s comments. There was no support for making the suggested revisions.

Mr. Bissett discussed the IIABA’s suggested revisions to Section 6A(1)(c) and (d). He said the IIABA suggests adding the word “annuity” to Section 6A(1)(c) to limit its scope to annuity products. The IIABA suggests adding the language “or relationship and only” to Section 6A(1)(d) for clarity. The Working Group discussed the IIABA’s suggested revision to Section 6A(1)(c). Some Working Group members expressed concern with adding the limiting language, particularly as to how it could affect replacement products. There was no support for making the suggested revision.

The Working Group discussed the IIABA’s suggested revision to Section 6A(1)(d). After discussion, the Working Group agreed to accept the suggested revision. The Working Group also discussed whether Section 6A(1)(d) is the appropriate place to add language to address an issue raised in the Joint Trades’ comments, which it previously discussed, concerning the possibility of consumers tying a recommendation to a particular outcome or performance. After discussion, the Working Group again deferred making a decision until the Joint Trades presented revised language.

Director Froment said the Working Group would begin its next conference call on Oct. 29 with discussing the comments received on Section 6A(2)—Disclosure Obligation.

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

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Annuity Suitability (A) Working Group
Conference Call
October 8, 2019

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Oct. 8, 2019. The following Working Group members participated: Jillian Froment, Chair (OH); Doug Ommen, Vice Chair (IA); Jodi Lerner (CA); Susan Jennette (DE); Dean L. Cameron (ID); Tate Flott (KS); Nour Benchaaboun (MD); Renee Campbell (MI); Matt Holman (NE); Andrew Schallhorn (OK); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Rachel Jade-Rice (TN); and Richard Wicka (WI).

1. Discussed Comments Received on Proposed Revisions to Model #275

Director Froment reminded the Working Group of its goals for its June 20 meeting and its subsequent meetings, which was to develop a framework for revising the *Suitability in Annuity Transactions Model Regulation* (#275) to include a best interest standard of conduct that is more than the model’s current suitability standard, but not a fiduciary standard. She said that based on the developed framework and as discussed at the Working Group’s meeting at the Summer National Meeting, the Working Group’s technical drafting group met in September and developed a draft of proposed revisions to Model #275. (see NAIC Proceedings – Fall 2019, *Life Insurance and Annuities (A) Committee, Attachment 7*). She said that during the Working Group’s Sept. 7 conference call, the Working Group developed a Working Group draft of proposed revisions to Model #275 (Attachment 7) based on the technical drafting group’s draft and exposed it for a public comment period ending Sept. 30. She said the purpose of this conference call is to begin a section-by-section discussion of the comments received by the public comment deadline.

   a. Title

Director Froment said the Independent Insurance Agents & Brokers of America (IIABA) submitted comments on Model #275’s title suggesting revising the title from “Suitability in Annuity Transactions Model Regulation” to “Suitability in Annuity Transactions Model Law.” Wes Bissett (IIABA) said the IIABA believes Model #275 should be a model law because the proposed revisions will require statutory authority for a state to adopt. Mr. Holman said it is a state-by-state decision whether to adopt the proposed revisions by regulation or by statute. After discussion, the Working Group decided not to accept the IIABA’s suggested revision.

   b. Section 1—Purpose

Director Froment said the Joint Trades—in a joint comment submission from the American Council of Life Insurers (ACLI), the Committee of Annuity Insurers (CAI), the Financial Services Institute (FSI), the Indexed Annuity Leadership Council (IALC), the Insured Retirement Institute (IRI), the National Association for Fixed Annuities (NAFA), the National Association of Insurance and Financial Advisers (NAIFA) and the Association for Advanced Life Underwriting (AALU)—the Fixed Annuity Consumer Choice Campaign (FACC) and the IIABA submitted comments on Section 1A—Purpose.

Pat Reeder (ACLI) said the Joint Trades suggest revising Section 1A to clarify that the required standard of conduct does not guarantee an outcome. He said similar language is included in New York’s Regulation 187, which establishes a best interest standard of conduct. After discussion of the suggested revisions, the Working Group decided not to accept it because of concerns about its appropriateness for this section.

Kim O’Brien (FACC) said the FACC suggests revising Section 1A to delete the reference to “best interest” because of its concerns with using an undefined and ambiguous term. Mr. Bissett asked the Working Group to defer the IIABA’s suggested revisions to Section 1A until the Working Group discusses Section 6—Duties of Insurers and Producers.

Director Cameron said any discussions related to whether to include a best interest standard of conduct in the Model #275 revisions should be deferred until the Working Group discusses Section 6—Duties of Insurers and Producers. Director Froment noted that all of the draft provisions are open until the Working Group completes its work and forwards the draft revisions to the Life Insurance and Annuities (A) Committee for its consideration. She reminded the Working Group that as it moves through the discussion of the comments, the Working Group’s goal is to see if it can reach general support and consensus to make any requested changes to the draft based on the comments received.
The Working Group discussed the IIABA’s suggestion to delete the proposed drafting note for Section 1B. The proposed drafting note states that for purposes of Section 989J of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), the revised Model #275 is a successor to the 2010 revisions, which added a suitability standard of conduct. Mr. Bissett explained that the purpose of Section 989J was to permit states to continue to regulate equity-indexed annuities if they adopted the NAIC’s 2010 amendments to Model #275. He said the current draft of proposed revisions to Model #275 will replace the suitability standard of conduct with a best interest standard of conduct. He said that for those states that do not want to adopt such a standard, there would be a question about their ability to continue to regulate equity-indexed annuities. The Working Group discussed the IIABA’s suggested revision. After additional discussion, the Working Group decided to defer making any decision on the suggested revision and asked NAIC staff to contact the NAIC Legal Division to research this issue.

c. Section 2—Scope and Section 3—Authority

Director Froment said the IIABA submitted comments on Section 2—Scope and Section 3—Authority consistent with its suggested revision to the title and Section 1 to change Model #275 to a model law. She said that based on the Working Group’s discussion of those suggested revisions, the Working Group will not accept the IIABA’s suggested revisions for those sections. The Working Group agreed. No other comments were received on Section 2 or Section 3.

d. Section 4—Exemptions

Director Froment said the Joint Trades submitted comments on Section 4A—Exemptions. Gary Sanders (NAIFA) said the Joint Trades suggest deleting language providing a specific exemption for certain direct response solicitations. He said that based on the on the proposed revisions to Model #275, the Joint Trades believe the revised model is intended to apply only to solicitations where there is a recommendation. Commissioner Ommen said Section 4A is an existing model provision. He said the proposed revision broadens the existing exemption. After discussion, the Working Group decided not to accept the suggested revision.

The Working Group next discussed the FACC’s suggested revisions to Section 4B. Ms. O’Brien said the FACC suggests adding the following language to the lead-in to Section 4B: “Contracts that are not individually solicited and are used to fund.” She said this proposed revision is intended to address a situation in the marketplace where consumers are being individually solicited to purchase an annuity for a plan described in Section 4B. Jason Berkowitz (IRI) said the Section 4 exemption language has been in Model #275 since its inception. He said federal law preempts the states from regulating the types of plans described in Section 4B. He also said another reason for the exemption is that federal law imposes a fiduciary duty on plan sponsors with respect to these types of plans. Ms. O’Brien said the FACC’s proposed revision was included in a previous draft of proposed revisions to Model #275. Mr. Berkowitz said the California Department of Insurance (DOI) offered that suggested revision to address specific concerns in their marketplace. He suggested that California’s concerns could be addressed in another way. After discussion, the Working Group decided not to accept the FACC’s suggested revision.

e. Section 5—Definitions

The Working Group discussed Section 5—Definitions. No comments were received on the definition of “annuity” in Section 5A or the definition of “cash compensation” in Section 5B.

Pam Heinrich (NAFA) said the Joint Trades suggest deleting Section 5C(3) and Section 5C(5) in the definition of “consumer profile information” because these provisions are duplicative of other language used in the definition. She said the Joint Trades also suggest deleting the language “including variability in premium, death benefit or fees” in paragraph (11) and substituting the proposed newly defined term “non-guaranteed elements.” She said the proposed definition of “non-guaranteed elements” encompasses the language the Joint Trades suggests deleting. She said the definition for “non-guaranteed elements” is taken from the Annuity Disclosure Model Regulation (#245).

Commissioner Ommen asked if Section 5C(3) and Section 5C(5) are deleted, then what would require a producer or an insurer to specifically review the consumer’s financial situation and needs or financial objectives. Ms. Heinrich said the requirement to review these specific elements is part of the producer’s or insurer’s general requirement under the proposed revisions to make recommendations that effectively address the consumer’s financial situation, insurance needs and financial objectives.
The Working Group discussed the suggested revisions. Director Cameron expressed support for retaining Section 5C(3) and Section 5C(5) because it is critical that the producer have this information as part of the consumer’s profile information when making a recommendation. After additional discussion, the Working Group decided to retain Section 5C(3) and Section 5C(5). Mr. Berkowitz requested the Working Group consider language that would clarify what is meant by the language “debts and obligations” in Section 5C(3). The Working Group agreed and asked Mr. Berkowitz to submit language for its review during its next conference call.

Binny Birnbaum (Center for Economic Justice—CEJ) asked the Working Group to consider adding “insurance needs” to the list of information required to be considered as part of the consumer’s profile information. Superintendent Dwyer said she assumed “insurance needs” was incorporated in the list of information already in the definition of “consumer profile information,” but said she has no objection to specifically adding it to the list. After discussion, the Working Group agreed to add “insurance needs.”

The Working Group discussed whether to delete the language “including variability in premium, death benefit or fees” in Section 5C (11) and substitute the proposed new definition for the term “non-guaranteed elements.” Mr. Birnbaum suggested that the definition could be added without deleting the suggested language. After discussion, the Working Group agreed to accept the suggested revisions and to add the language “including, but not limited to” as Commissioner Ommen suggested.

No comments were received on the following definitions: 1) “continuing education credit” in Section 5D; 2) “continuing education provider” in Section 5E; 3) “FINRA” in Section 5F; 4) “insurer” in Section 5G; or 5) “intermediary” in Section 5H.

The Working Group discussed the Joint Trades’ suggested revisions to the definitions of “material conflict of interest” in Section 5I and “non-cash compensation” in Section 5J. Robbie Meyer (ACLI) said the Joint Trades are suggesting these revisions for clarity and to expressly exclude benefits from being considered “non-cash compensation.” She said the concern is that if these benefits are not expressly excluded, they would be considered non-cash compensation and producers would be prohibited from receiving these benefits in accordance with Section 6C(2)(h). The Working Group discussed the suggested revisions and decided to defer making a decision on the suggested revisions until it discusses Section 6—Duties of Insurers and Producers.

No comments were received on the definition of “producer” in Section 5K.

The Working Group discussed the Joint Trades’ suggested revision to the definition of “recommendation” in Section 5L. Mr. Berkowitz said the Joint Trades’ suggested revision is intended to make clear that a recommendation is advice given to the consumer regardless of whether the transaction is completed. The Working Group discussed the suggested revision and decided not to accept it because of concerns that the suggested revision narrowed the language.

The Working Group discussed the Joint Trades’ suggested revision to the definition of “replacement” in Section 5M. Mr. Berkowitz said the Joint Trades suggests these revisions for consistency with the definition of “annuity” in Section 5A. After discussion, the Working Group agreed to accept the suggested revisions.

No comments were received on the definition of “SEC” in Section 5N.

Director Froment said the Working Group would defer discussion of the remaining additional suggested definitions because those definitions involved the safe harbor provision in Section 6. She said the Working Group would discuss them as part of its discussion of that provision.

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

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Annuity Suitability (A) Working Group
Conference Call
September 17, 2019

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Sept. 17, 2019. The following Working Group members participated: Jillian Froment, Chair (OH); Doug Ommen, Vice Chair (IA); Steve Ostlund (AL); Jodi Lerner (CA); Fleur McKendell (DE); Dean L. Cameron (ID); Tate Flott (KS); Nour Benchaaboun (MD); Renee Campbell (MI); Matt Holman (NE); Denise Lamy (NH); James Regalbuto (NY); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Lorrie Brouse and Rachel Jade-Rice (TN); and Richard Wicka (WI).

1. Discussed and Exposed the Technical Group Draft of Proposed Revisions to Model #275

Director Froment reminded the Working Group of its goals for its June 20 meeting and its subsequent meetings, which was to develop a framework for revising the *Suitability in Annuity Transactions Model Regulation (#275)* to include a best interest standard of conduct that is more than the model’s current suitability standard, but not a fiduciary standard. She said that based on the developed framework and as discussed at the Working Group’s meeting at the Summer National Meeting, the Working Group’s technical drafting group met in September and developed a draft of proposed revisions to Model #275 (Attachment ?). She said the purpose of this call is to allow the Working Group to review, comment and offer suggested revisions to the draft in order to develop a Working Group draft for exposure for public comment. She explained that although it is an open call, only Working Group members will be allowed to comment. She noted that all stakeholders would have sufficient time to comment on the draft during the public comment period and subsequent Working Group calls to review and discuss the comments received.

a. Section 1—Purpose

Director Froment reviewed the proposed revisions to Section 1—Purpose. She said the revisions make it clear that Model #275’s purpose it is to require producers to act in the consumer’s best interest when making a recommendation of an annuity and require insurers to establish and maintain systems to supervise these recommendations. She requested comments from the Working Group. There were no comments.

b. Section 2—Scope

Director Froment reviewed the proposed revisions to Section 2—Scope. Mr. Regalbuto asked if it is appropriate to discuss whether Model #275 should apply to in-force recommendations. After discussion, the Working Group decided to defer that discussion until the Working Group discusses the definition of “recommendation” in Section 5L. There were no additional Working Group comments on this section.

c. Section 3—Authority

Director Froment said no revisions were made to Section 3—Authority. There were no comments from Working Group members on this section.

d. Section 4—Exemptions

Director Froment said no revisions were made to Section 4—Exemptions. There were no comments from Working Group members on this section.

e. Section 5—Definitions

Director Froment reviewed the proposed revisions to Section 5—Definitions. Mr. Wicka asked about the proposed revisions to the definition of “recommendation” in Section 5L. He said the proposed revisions adding the language “is intended to result” creates an element of intent, which must be proven in a hearing. He suggested striking the language and substituting “does result” in order to avoid having to prove intent. After additional discussion, the Working Group decided to revise the definition as follows: “was intended to result and does result.”
Mr. Regalbuto asked the Working Group to consider adding language to the definition of “recommendation” to have Model #275 apply to “in-force” sales when a modification is made to the in-force annuity contract or the consumer elects a contractual option, which generates cash or non-cash compensation for the producer providing the advice. The Working Group discussed Mr. Regalbuto’s suggestion. Some Working Group members expressed caution for including such language, and others expressed some hesitation to include such language in the draft until additional information and specific language is provided for the Working Group’s review. After additional discussion, the Working Group decided to defer making a decision until it could receive additional comments from stakeholders.

f. Section 6—Duties of Insurers and Producers

Director Froment reviewed the provisions of Section 6A—Duties of Insurers and Producers, Best Interest Obligations. She explained that Section 6A requires a producer to act in the consumer’s best interest in making a recommendation without placing the producer’s or the insurer’s financial interest ahead of the consumer’s interest and outlines how a producer or insurer would comply with this requirement by satisfying the care, disclosure, conflict of interest and documentation obligations. She asked the Working Group for comments. There were no comments.

Director Froment pointed out a potential provision for inclusion in Section 6A from New York, which would extend the model’s requirements to every producer who has materially participated in the making of a recommendation and received compensation as a result of the sales transaction regardless of whether the producer has had any direct contact with the consumer. Mr. Regalbuto explained his reasoning for suggesting the inclusion of this language. He said inclusion of this provision is particularly important with respect to new producers or recommendations involving complex products where another producer with more knowledge may be brought in to assist. Director Froment said the technical draft group discussed New York’s concerns and its reasoning for suggesting the language but struggled with whether this language was the way to address it or if there was another approach it should consider. Ms. Brouse suggested another approach could be to revise Model #275’s supervision provisions to address it. Commissioner Ommen suggested the Working Group receive additional comments on New York’s suggested language. The Working Group agreed.

Director Froment reviewed Section 6B, Transactions Not Based on a Recommendation. She asked the Working Group for comments. There were no comments.

Director Froment reviewed Section 6C, Supervision System. She asked the Working Group for comments. Ms. Lerner asked why Section 6C(2)(h) requires an insurer to establish and maintain “minimum” procedures. After discussion, the Working Group agreed to delete the word “minimum” for consistency with similar language in Section 6C.

g. Appendix A—Producer Relationship Disclosure Form

Director Froment reviewed Appendix A—Producer Relationship Disclosure Form. She asked for comments from the Working Group. With respect to the heading “Insurance Authorization,” Ms. Brouse discussed the issue of a producer being authorized to “sell” versus “offer” certain annuities. After discussion, the Working Group decided to add the language “or have access to offer.” The Working Group discussed the purpose of the form and whether it included all of the information that should be disclosed in accordance with Section 6A(2) with respect to the producer and consumer relationship. After additional discussion, the Working Group decided to request specific comments on the issue.

Mr. Benchaboun asked if consumers should be required to sign the form and acknowledge receipt. After discussion, the Working Group decided to ask for specific comments on this issue.

h. Appendix B—Consumer Refusal to Disclose All or Partial Consumer Profile Information Form

Director Froment reviewed Appendix B—Consumer Refusal to Disclose All or Partial Consumer Profile Information Form. She asked the Working Group for comments. There were no comments.

Director Froment exposed the draft of proposed revisions to Model #275, as discussed during the conference call, for a 13-day public comment period ending Sept. 30.
2. **Discussed the Working Group’s Next Steps**

Director Froment discussed the Working Group’s next steps. She said the Working Group will discuss any comments received on the draft of proposed revisions to Model #275 via conference call beginning in early October through November. The Working Group’s goal is to present a draft to the Life Insurance and Annuities (A) Committee for its consideration prior to or at the Fall National Meeting.

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

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Annuity Suitability (A) Working Group
Conference Call
July 29, 2019

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call July 29, 2019. The following Working Group members participated: Jillian Froment, Chair (OH); Doug Ommen, Vice Chair (IA); Steve Ostlund (AL); Jodi Lerner (CA); Dean L. Cameron (ID); Tate Flott and Shannon Lloyd (KS); Nour Benchaaboun (MD); Renee Campbell (MI); Matt Holman (NE); Keith Nyhan (NH); Andrew Schallhorn (OK); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Lorrie Brouse (TN); and Richard Wicka (WI).

1. Discussed “Parking Lot” Issues Related to Proposed Revisions to Model #275

Director Froment reminded the Working Group of its goal from its July 23 conference call, which is to continue to discuss at a high level a framework for revising the Suitability in Annuity Transactions Model Regulation (#275) to include a best interest standard of conduct that is more than the model’s current suitability standard, but not a fiduciary standard. She reminded the Working Group that a series of questions involving some of the highlighted issues discussed during its June 20 meeting was distributed for comment during its July 23 call. She said the Working Group finished discussion of the questions related to the conflict of interest topic during its July 23 call. During this call, the Working Group would discuss the questions related to the care obligation.

The Working Group discussed whether the care obligation should include a requirement for the producer to exercise “prudence” in developing a recommendation. Ms. Lerner said she had submitted comments on this issue suggesting retaining the “prudence” requirement. Director Froment asked Ms. Lerner if her comment would change given that the Working Group is not looking to include a fiduciary standard in the Model #275 revisions. Ms. Lerner said she would still recommend retaining the requirement because the producer or insurer is dealing with a consumer’s retirement savings.

Commissioner Ommen discussed the Iowa Department of Insurance’s (DOI) reasoning for including “prudence” in its suggested revisions to Model #275 and why it recommends removing the requirement. He explained that the Iowa DOI included “prudence” in its suggested revisions because the U.S. Securities and Exchange Commission (SEC) included it in its proposed best interest regulation. However, the final best interest regulation removed it. Commissioner Ommen also explained that in Iowa, and most likely other states, “prudence” is tied to the “prudent investor rule,” which encourages the conservation of assets. He said its use creates a legal standard such that a producer or insurer could not recommend a variable annuity because a fixed annuity would be the prudent recommendation under the conservation of assets concept. The Working Group discussed this issue.

Gary A. Sanders (National Association of Insurance and Financial Advisors—NAIFA) said NAIFA does not believe “prudence” should be included in Model #275. Birny Birnbaum (Center for Economic Justice—CEJ) encouraged the Working Group to include “prudence.” He said its use would elevate the model to a best interest standard. He suggested that the comments against including it concerned securities law and as such, this concern can be addressed by defining “prudence.” Mr. Gendron asked Mr. Birnbaum to provide an example that state insurance regulators could not prosecute if the word “prudence” is not included. Mr. Birnbaum said at this point, there is nothing in the proposed Model #275 revisions requiring a producer or insurer to make a recommendation in the consumer’s best interest without using the word “prudence.” Ms. Lerner asked Mr. Birnbaum for a definition of “prudence.” Mr. Birnbaum said he would provide this information in written comments later.

The Working Group discussed the issue further, including a few scenarios and other potential revisions to Model #275, such as the use of the words “best suited,” as a potential language to address Mr. Birnbaum’s concern. Commissioner Ommen said as the proposed revisions to Model #275 reflect, there is more to the best interest obligation than the care obligation.

The Working Group discussed whether it is an appropriate standard to require a producer when making a recommendation, the recommendation be considered reasonable for an “ordinary” producer to make in a similar circumstance. Commissioner Ommen explained why the Iowa DOI included this language in its suggested revisions. Ms. Lerner said she believes an “ordinary” producer standard is too low. After additional discussion, the Working Group agreed not to include this suggested language in the next Model #275 draft revisions.
The Working Group discussed whether a producer should provide an oral or written description of the basis of the recommendation to the consumer or whether a producer should provide an oral and written description of the basis of the recommendation to the consumer. Ms. Lerner said the consumer should receive both an oral and written description of the producer’s basis of the recommendation. She said the written description should be understandable and expressed support for developing a form or template for producers to use to satisfy this requirement. Director Froment discussed the concerns some Working Group members expressed during the Working Group’s June 20 meeting with requiring a written description because a producer’s recommendation could be based on oral conversations with the consumer during initial client meetings. Commissioner Ommen also voiced potential difficulties with a written requirement. He expressed support for giving producers the option of oral or written. He also pointed out that there is a requirement for producers to provide a written documentation related to the recommendation under the documentation obligation. Director Cameron expressed support for giving producers the option.

The Working Group discussed the issue further, debating the challenges of requiring a producer to provide a written description of the basis of the recommendation as part of the producer’s communications with the consumer during initial client meetings, particularly in light of the requirement for the producer to document the basis of the recommendation under the documentation obligation. The Working Group also discussed the value of written documentation as compared to effective communication and the importance of effective communication, whether oral or written.

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

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The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call July 23, 2019. The following Working Group members participated: Jillian Froment, Chair, and Michelle Brugh Rafeld (OH); Doug Ommen, Vice Chair, Johanna Nagel and Lindsay Bates (IA); Steve Ostlund (AL); Jodi Lerner (CA); Dean L. Cameron and Geoff Baker (ID); Nour Benchaaboun, Tate Flott and Shannon Lloyd (KS); Nour Benchaaboun (MD); Randall Gregg (MI); Bob Harkins (NE); James Regalbuto (NY); Denise Lamy (NH); Andrew Schallhorn (OK); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Michael Humphreys and Lorrie Brouse (TN); and Richard Wicka (WI). Also participating were: Vincent Gosz (AZ); Chris Struk (FL); Mike Chrysler (IL); Robert Wake and Lindsay Laxon (ME); Daniel Morris (SC); Travis Jordan (SD); Melissa Gerachis (VA); and Scott Bird (WA).

1. **Discussed “Parking Lot” Topics from July 10 Comments**

Director Froment provided an overview of the discussion from the Working Group meeting held June 20 in Columbus, OH. She explained that, following the meeting, the Working Group received eight comment letters by the July 10 deadline on the two “parking lot” topics from that meeting, including “conflict of interest” and “care obligation,” and the questions posed under each topic.

Director Froment stated that the goal of the Working Group is to define “best interest.” She explained that “best interest” is something more than suitability and something less than fiduciary. She said that because there are parties that must comply with the U.S. Security and Exchange Commission’s (SEC) best interest regulation in addition to insurance law, the Working Group will need to harmonize the Suitability in Annuity Transactions Model Regulation (#275) with the SEC regulation.

Director Froment said that as the Working Group drafts further revisions, she wants to use, as a starting point, Iowa’s proposed draft revisions to Model #275, dated May 30, 2019, because they were drafted in an attempt to harmonize with the SEC best interest regulation.

2. **Discussed the Conflict of Interest Topic**

   a. **Question 1: What constitutes a material conflict of interest when recommending annuities?**

Director Froment explained that, based on the comment letters, there are two situations in which there is a potential material conflict of interest: 1) a financial conflict, based on the producer’s fees, payment or commissions; and 2) a producer with ownership interest in a parent, subsidiary or affiliate of the insurer offering the annuity.

Commissioner Ommen suggested separating extraordinary compensation (including sales contests, quotas and bonuses) from typical compensation such as common commissions or fee structures.

Ms. Lerner said even typical compensation practices could be concerning. She said the higher the commission, the greater potential conflict.

Mr. Gregg agreed with Commissioner Ommen that compensation creates a per se conflict of interest.

Ms. Neil stated that Rhode Island is also concerned about the manner in which agents are paid. She asked, once the commission is paid, what incentivizes an agent to advise that a consumer hold an investment, rather than replace it in order to obtain another commission.

Director Froment explained that there might be conflicts the producer can control and some that only the insurer can the control.

Commissioner Ommen said insurers should be responsible for managing a producer’s conflicts and incentivizing them appropriately.
Ms. Brouse said the mere fact that an agent is being compensated does not necessarily create a conflict. But insurers need to have processes in place to determine whether producers are manipulating the program to the disadvantage of the consumers.

Director Cameron said producers rarely know what compensation is for a particular product. Therefore, the regulation should not penalize agents from being compensated for selling products that help consumers achieve retirement. He stated that everyone expects agents to be paid. He recommended including a section of the model prohibiting an agent from considering non-cash compensation when recommending a product.

Director Froment summarized the discussion by explaining that there are three levels of what could create a conflict of interest, but not all of them rise to the level of a material conflict of interest: 1) a producer’s basic fees and commissions; 2) sales, quotas, bonuses and non-cash compensation that incentivizes sales of a specific product within a certain time frame; and 3) a producer’s ownership interest.

Director Froment continued by explaining that, as part of the disclosure obligation, producers should disclose that they earn a commission. Further, the ownership interest rises to the material level and probably needs its own disclosure, although that conflict would not apply to many producers. Finally, carriers should be responsible for supervising and monitoring any potential conflicts related to non-cash compensation to ensure that the incentives are not causing conflicts.

Ms. Lerner expressed her belief that disclosure of compensation should be dealt with in the supervisory section. It should be up to the insurers to notify the agents and intermediaries as to what their duties and obligations are.

Commissioner Ommen said he does not want insurers to be obligated to sit down with other insurers to determine what the compensation structure should look like, but insurers should manage the incentives.

Mr. Gendron said he would like to narrow the issue of when sales quotas create a conflict and leave this to the carriers. Director Froment agreed that the Working Group should refine that issue, because it could include a number of things.

Director Cameron explained that carriers can have an increased role in supervising, but there needs to be a better understanding of how that would work. A carrier might have overlapping incentives occurring at once, for varying lengths of time. He said if a carrier is required to disclose the incentives, the agent would need to figure out a way to explain that to the consumer. The real issue, he said, is that consumers do not want to be directed to a product because the agent would make more money. He said it would be counterproductive to force an independent agent to find out what incentives each carrier is providing.

Commissioner Ommen clarified his position on sales quotas, explaining that if sales quotas are generalized, and not tied to a specific product, it would not hinder an agent’s ability to find the best product on their shelves, based on the consumer’s profile. The insurance company is in the best position to address this.

Director Froment summarized the discussion, explaining that a producer has only so much control over certain items and the insurer is the only party that can control specific commissions, quotas and sales. She noted the Working Group’s agreement that: 1) producers should disclose that they are receiving a commission; 2) the potential for conflict in the context of incentives, which she said is about insurer supervision; and 3) producers should disclose if they have an ownership interest in a company.

Director Froment then asked for comments from interested regulators.

Mr. Wake explained that the Working Group is working to craft a standard that is more than suitability but less than fiduciary. He said producers are salespeople who work for insurance companies and insurers are in the business of giving incentives to producers to sell their product. He said it would be unrealistic to demand that insurers and producers be disinterested, but there is a need for consumers to understand clearly why insurers and producers are not fiduciaries. He said some material conflicts of interest are abusive and some are “baked” into the system. He said just because something is permissible does not mean it is not in the category of a conflict that needs to be disclosed. Separately, insurers are going to incentivize producers to sell their products, so there needs to be standards for determining when this is inappropriate. The issues that need to be addressed are when to disclose and when to mitigate. Simple commissions are currently being called a conflict and prevent agents from being totally disinterested.

Director Froment then asked to hear from interested parties.
Jason Berkowitz (Insured Retirement Institute—IRI) said that with respect to the middle “bucket” (i.e., providing guidance on how insurers should supervise is helpful and asked that as Working Group members think about how to provide that guidance), the Working Group should keep in mind that there are producers selling products for multiple carriers. He stated his concern that the Working Group is sure not to impose supervisory responsibilities on one carrier that would extend to them supervising other carriers.

Gary Sanders (National Association of Insurance and Financial Advisors—NAIFA) agreed that regular commissions should be part of disclosure obligation. He explained that the way NAIFA members conduct business, there is a strong disincentive to go after the highest commission all the time. He said most agents are not transaction-based but relationship-based, so it is in their own best interest to look after their client’s best interest or they would lose that client relationship.

Birny Birnbaum (Center for Economic Justice—CEJ) said it is important to keep in mind that people are turning over their lifetime savings. Therefore, he said, any comparisons to auto insurance and other types of insurance are not applicable. He stated his disagreement with what he called an artificial demarcation between different types of compensation. He said the idea of focusing on bonuses or sales contests, rather than the fundamental commission structure, is misplaced. It is insurers and insurance marketing organizations (IMOs) that should have the responsibility for developing and deploying compensation structures that do not conflict with a best interest standard of care. He explained that if a producer must disclose this, it would have to be with information provided by the insurer or the IMO.

Commissioner Ommen stated that, regarding independent agents, one of the challenges is how a single carrier can manage different levels of compensation in that distribution structure.

Mr. Birnbaum answered that a carrier is responsible for developing its compensation arrangement with a particular producer. And if a producer uses several companies, that producer should get the same information from each company. It should not be the agent’s responsibility to disclose more than what the insurance company provides regarding the compensation they are receiving.

Director Froment asked Mr. Birnbaum to clarify his position on disclosure, as there is some confusion over whether the CEJ believes disclosure is helpful or a hinderance.

Mr. Birnbaum explained that there are situations where disclosure would empower a consumer and situations where it would not. He said annuities are extremely complex products that include illustrations. He said the CEJ’s concern is that adding another set of disclosures would not be effective. The disclosure should be simple and comparative between different products the producer offers. Mr. Birnbaum said there should be a requirement in the regulation that insurance companies or IMOs should employ a compensation scheme that does not undermine a best interest standard of care. Further, he stated that compensation schemes should be designed to avoid churning or unsuitable sales. And that compensation schemes should be designed to compensate or reward a producer for selling a product that stays in force to reflect the long-term investment nature of annuities.

Kim O’Brien (Fixed Annuity Consumer Choice—FACC) expressed her view that the Working Group should work on creating an objective standard and that the conversation has focused on subjective components. She said carriers and producers need to know what the standards are and what they are required to disclose, stating that a template would be helpful.

Director Froment agreed that there needs to be objective standards that both producers and insurers can comply with and regulators can enforce. She explained that the Working Group needs to coalesce around the broader ideas first and then it will drill down to the specifics.

Director Froment turned back to the Working Group, explaining that the Working Group has set forth the idea of three “buckets” that constitute the potential conflicts of interest. She explained that the first one, commissions, has been addressed in the disclosure obligation, noting that the Working Group still needs to determine if there is anything further to do under that area. Then, she explained that there is a second category, incentive compensation, which the Working Group has agreed is the insurer’s role under supervision. Finally, she explained that there is the ownership interest, which would require disclosure of the conflict so a consumer could decide whether to proceed with that producer.

Director Froment then asked whether any other regulators had thoughts on what else might constitute a material conflict of interest.
Ms. Lerner sought clarification as to whether it is the producer’s job or the insurer’s job to reveal fees, commissions and incentives. Director Froment said the disclosure obligation includes the scope and terms of the relationship; i.e., that the producer is paid when he or she sells a product. But that the producer has no ability to influence incentive compensation, so that obligation falls to insurer. Finally, she said the producer would need to disclose to the consumer if there is any ownership interest. Ms. Lerner then stated that she did not see it as the insurer’s obligation to disclose but the insurer should tell the agent what to reveal.

Commissioner Ommen agreed with Ms. Lerner that the suggestion that the middle “bucket” is a management, supervisory and structural responsibility of the insurer takes the producer off the hook for disclosure. He said the Working Group needs to look at what the producer’s disclosure should look like. He said the problem is incentives are tied to specific products. Director Froment said these would go under supervision. Commissioner Ommen agreed.

Director Froment asked whether there were any additional material conflicts of interest that do not fit into one of the three “buckets.”

Director Cameron said that some might perceive the ability for a carrier to provide office space as a potential conflict. He said he did not think office space fits in the compensation or bonus “bucket,” but it might be a subcomponent of incentives. He further explained that there are some property/casualty (P/C) carriers that incentivize their agents to sell life insurance and retirement products.

Ms. Lerner asked whether P/C carriers incentivize them with higher commissions. Director Cameron said it is part of their overall package. It might be a requirement in order to qualify for a trip, a producer would have to sell a percentage of life and annuities.

Mr. Ostlund said it sounds like a quota system, as opposed to an incentive, and asked for clarification. Director Cameron said it depends on the company; some are quotas and some are incentives and some classifications have different commission structures. Mr. Ostlund said these would fit into the second category and he would prefer not having a fourth category. Director Cameron agreed.

Director Froment said that in following up from this call, she would like to take the broad category of conflicts and start identifying what is in the second “bucket.”

b. **Question 2: When a material conflict of interest exists, how should an insurer and/or a producer avoid or otherwise reasonably manage the conflict?**

Director Froment said that some of the discussion on the call included answering the second question under “Conflicts: When a material conflict of interest exists, how should an insurer and/or a producer avoid or otherwise reasonably manage the conflict?” But because she did not specifically ask the second question, she asked whether anyone in the Working Group had final comments on this question.

No one responded, so Director Froment concluded by saying she would circulate a chart and outline to members of the Working Group. She said the Working Group would look at questions under “Care Obligation” on the next call, which is scheduled for July 29.

Having no further business, the Annuity Suitability (A) Working Group adjourned.
The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met in New York, NY, Aug. 3, 2019. The following Working Group members participated: Jillian Froment, Chair (OH); Doug Ommen, Vice Chair (IA); Steve Ostlund (AL); Jodi Lerner and Perry Kupferman (CA); Fleur McKendell (DE); Dean L. Cameron (ID); Tate Flott (KS); Renee Campbell and Randall Gregg (MI); Bruce R. Ramege and Matt Holman (NE); James Regalbuto (NY); Matt Gendron and Sarah Neil (RI); Carter Lawrence and Lorrie Brouse (TN); and Mark Afable and Richard Wicka (WI). Also participating were: Keith Schraad (AZ); Stephen C. Taylor (DC); Karl Knable (IN); Paul Hanson (MN); Mary Mealer (MO); Jon Godfread (ND); and Scott A. White (VA).

1. **Adopted its June 20 and Spring National Meeting Minutes**

The Working Group met June 20 and April 6. During its June 20 meeting, the Working Group discussed potential revisions to the *Suitability in Annuity Transactions Model Regulation* (#275). Ms. Lerner requested revisions to the language in the June 20 minutes to state “verbal and written communications.” The Working Group agreed to make the revision.

Ms. Brouse made a motion, seconded by Mr. Ostlund, to adopt the Working Group’s June 20, as revised (Attachment Four-A) and April 6 minutes (see NAIC Proceedings – Spring 2019, Life Insurance and Annuities (A) Committee, Attachment Two). The motion passed unanimously.

2. **Continued Discussion of Parking Lot Topic Issues Related to Proposed Revisions to Model #275**

Director Froment reminded the Working Group of its goals for its June 20 meeting and its subsequent meetings, which was to develop a framework for revising Model #275 to include a best interest standard of conduct that is more than the model’s current suitability standard, but not a fiduciary standard. She outlined what the Working Group planned to discuss during its meeting. She said the Working Group did not request written comments on these topics, but stakeholders are always welcome to submit written comments later.

   a. **Care Obligation**

The Working Group discussed whether the care obligation should require a producer or insurer to have a reasonable basis to believe the consumer would benefit from the features of the annuity when making a recommendation, which is found in Section 6A(2) of Model #275. Director Froment ask for comments from Working Group members.

Ms. Lerner said that any annuity would have something of benefit to a consumer. As such, she said she does not see this as an important issue. Director Ramge suggested revising the language to read “annuity and its features.” Mr. Gendron expressed support for the revised language. Birny Birnbaum (Center for Economic Justice—CEJ) discussed the CEJ’s comments on Section 6A(2) and Section 6A(3). He said the CEJ believes Section 6A(2) and Section 6A(3) are suitability standards—not best interest standards. He also questioned the meaning of some of the terminology, such as “product as a whole.” He said the CEJ suggests replacing both Section 6A(2) and Section 6A(3) with the following language: “a reasonable basis to conclude the recommended product or action best addresses the totality of the consumer’s insurance needs and financial objectives known at the time of the recommendation and based on the information provided by the consumer and other information about the consumer reasonably obtained from other sources.”

Commissioner Ommen said a best interest standard of conduct includes some elements of a suitability standard of conduct. He recommended retaining Section 6A(2). The Working Group discussed the language “product as a whole.” Director Ramge suggested deleting “address” in Section 6A(3) to “advance.” The Working Group discussed his suggestion and decided to continue discussion of his suggestion later. Director Froment stated that the outline she is working on would reflect retaining Section 6A(2) and Section 6A(3) under the care obligation with the expectation that the language would have to be refined.
Robbie Meyers (American Council of Life Insurers—ACLI) said the ACLI is concerned with using the phrase “best suited,” which Iowa included in its recent comments to the Working Group. She said the ACLI is concerned because: 1) it is not defined; 2) it could be construed to require a producer or insurer to recommend the “best” product; and 3) there is only one “best” product for the consumer to be recommended. The Working Group took her comments under advisement.

b. Documentation Obligation

The Working Group next discussed the topic under the documentation obligation to require the producer or insurer to obtain a consumer-signed statement of the consumer’s refusal to provide the profile information, which is in Section 6E(2). Mr. Gendron said Rhode Island has identified a practice by some producers advising consumers not to provide the profile information. He recommended removing the provision because producers need this information to make a recommendation. Mr. Hanson said he believes such practices would be caught in the supervision system. Commissioner Ommen discussed Iowa’s suggested language on the issue. He also noted that the current model requires producers to make reasonable efforts to obtain the profile information. He recommended retaining the language.

Ms. Lerner suggested the Working Group consider adding a provision in the supervision obligation to address this issue by including some sort of red flag alerting insurers to follow up in situations when a consumer refuses to provide the information. Mr. Gendron suggested possibly establishing a different type of oversight when a consumer does not want to provide the profile information and no recommendation is made. Director Cameron discussed his experiences with these situations. He said he believes there is a role for insurers to address situations where producers are allegedly telling consumers not to provide their financial information.

Mr. Birnbaum said the CEJ does not believe sales should be made in situations where the customer does not provide the profile information and no recommendation is made. He discussed the CEJ’s reasoning for its position. He suggested, however, that if the Working Group retains this provision, the revisions should require the producer or insurer to prepare and sign a statement documenting the refusal and other elements of the transaction. Gary Sanders (National Association of Insurance and Financial Advisors—NAIFA) said NAIFA believes that if the customer refuses to provide the profile information or provides insufficient information, the product can be sold, but without a recommendation. He said NAIFA believes the customer should be free to buy an annuity without a recommendation if that is what the customer wants. After additional discussion, Director Froment said there appears to be commonality among the Working Group that consumers: 1) should understand the ramifications of not providing their profile information or providing insufficient information; and 2) should be able to purchase an annuity without a recommendation.

c. Supervision Obligation

The Working Group next discussed a provision in Section 6F(3) of Model #275, which provides that an insurer only has to supervise its own products. Ms. Lerner noted previous Working Group discussions about this provision. She said she believes this is an issue particularly with replacements, when there should be a review, but not supervision, of the products, including any replacements, the consumer already owns before making a recommendation.

Mr. Birnbaum discussed the CEJ’s comments on this provision. He noted that the full provision in Model #275 states: “An insurer is not required to include in its system of supervision an insurance producer’s recommendations to consumers of products other than the annuities offered by the insurer.” He said there is a difference between an insurer being responsible for supervising recommendations and sales of the products it offers versus a supervision system that does not take into account other products available to a consumer. He said that the CEJ believes the current producer recommendation supervision system in the model does not preclude consideration of other products available to the consumer. He said that if that is the case, then the CEJ does not object to the current language.

3. Discussed the Working Group’s Next Steps

Director Froment discussed the Working Group’s next steps. She said she has spoken with a few Working Group members to see if they would serve on a technical draft group to develop a draft of revisions to Model #275 based on the framework, including its guardrails and principles, developed by the Working Group during its June meeting in Columbus, OH, its July conference calls and today’s meeting. The goal is to have the technical drafting group meet after the Summer National Meeting in late August or early September. She said that upon receipt of the draft from the technical drafting group, the Working Group
Draft Pending Adoption

Attachment Four
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will review it and set a public comment period to receive comments on the draft. The Working Group plans to set a regular day and time to begin meeting weekly via conference call beginning in early October through November to discuss the comments received. The Working Group’s goal is to present a draft to the Life Insurance and Annuities (A) Committee for its consideration prior to or at the Fall National Meeting.

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

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Agenda Item #2

Discuss Any Outstanding Working Group Issues—Director Jillian Froment (OH)
Agenda Item #3

Discuss Any Other Matters Brought Before the Working Group—Director Jillian Froment (OH)