2020 Summer National Meeting  
Virtual Meeting

ANNUITY SUITABILITY (A) WORKING GROUP  
Wednesday, July 29, 2020  
1:00 – 2:00 p.m. ET / 12:00 – 1:00 p.m. CT / 11:00 a.m. – 12:00 p.m. MT / 10:00 – 11:00 a.m. PT  
WebEx Event

ROLL CALL

Doug Ommen, Chair  Iowa  Bruce R. Ramge  Nebraska  
Jillian Froment, Vice Chair  Ohio  Keith Nyhan  New Hampshire  
Jerry Workman/Steve Ostlund  Alabama  Linda A. Lacewell  New York  
Jodi Lerner  California  Andrew Schallhorn  Oklahoma  
Fleur McKendell  Delaware  Elizabeth Kelleher Dwyer  Rhode Island  
Dean L. Cameron  Idaho  Rachel Jrade-Rice  Tennessee  
Tate Flott  Kansas  Richard Wicka  Wisconsin  
Renee Campbell  Michigan

NAIC Support Staff: Jolie H. Matthews

AGENDA

1. Consider Adoption of its Dec. 19, 2019, and 2019 Fall National Meeting Minutes  
—Commissioner Doug Ommen (IA)

2. Discuss its Work in 2020 to Develop a Frequently Asked Questions (FAQ) Guidance Document on the Revisions to the Suitability in Annuity Transactions Model Regulation (#275)  
—Commissioner Doug Ommen (IA)

3. Discuss Any Other Matters Brought Before the Working Group—Commissioner Doug Ommen (IA)

4. Adjournment

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Agenda Item #1

Consider Adoption of its Dec. 19, 2019, and 2019 Fall National Meeting Minutes
—Commissioner Doug Ommen (IA)
The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Dec. 19, 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); Dean L. Cameron (ID); Vicki Schmidt and Tate Flott (KS); Nour Benchaaboun (MD); Renee Campbell (MI); Bob Harkins (NE); Keith Nyhan (NH); Mark McLeod (NY); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Patrick Merkel (TN); and Richard Wicka (WI).

1. Discussed Comments Received on Appendices to Model #275

Director Froment discussed the purpose of the call, reminding the Working Group that at the Fall National Meeting, the Life Insurance and Annuities (A) Committee directed the Working Group to discuss potential revisions to the appendices based on the comments received by the Nov. 26 public comment deadline and any supplemental comments received. She said the goal is to create consumer-friendly documents that provide guidance to producers and insurers in satisfying the disclosure and documentation obligations established in the proposed revisions to the Suitability in Annuity Transactions Model Regulation (#275). She said the Working Group would discuss the comments received section-by-section beginning with Appendix A.

Director Froment said the Center for Economic Justice (CEJ) had submitted comments on Appendix A’s title suggesting that the title should be revised to reflect consumer-friendly terms such as “agent and broker” and the appendix’s scope, which is annuities. After discussion, the Working Group agreed to accept the suggested revision, but retained the word “producer” in parentheses in the title because state departments of insurance (DOIs) license “producers.”

The Working Group next discussed the CEJ’s suggested revisions to the next section, “Insurance Agent Information,” which describes the information to be provided on the form concerning the insurance agent. Wes Bissett (Independent Insurance Agents & Brokers of America—IIABA) asked what the reference to “company name” means and whether it refers to the name of the insurance company or the producer’s insurance agency. He said most consumers will assume “company” name means the insurance company. The Working Group discussed whether to retain “company” or use another word. After discussion, the Working Group agreed to change the reference to “business/agency name.”

The Working Group discussed the next section, “Client Information,” which describes the information to be provided on the form concerning the consumer. Mr. Bissett suggested changing the word “client” to “consumer.” After discussion, the Working Group agreed to accept Mr. Bissett’s suggested revision.

The Working Group discussed the next section, “Insurance Authorization.” 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)—and the CEJ submitted comments on this section. Birny Birnbaum (CEJ) explained that the CEJ’s suggested revisions to this section make it more consumer friendly. He said the CEJ differs in its approach to this section from the Joint Trades’ approach because the CEJ believes this section should include other types of investment products a producer may be authorized to sell, not just annuities. He pointed out that both the CEJ and the Joint Trades agree that the product checklist should be deleted. The Working Group discussed the two approaches and whether to delete the product checklist. After discussion, the Working Group agreed to change the section’s title to “What Types of Products Can I Sell You?” The Working Group also agreed to revise the section’s language to read as follows: “I am licensed to sell annuities to You in accordance with state law. If I recommend that You buy an annuity, it means I believe that it effectively meets Your financial situation, insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds and mutual funds, also may meet Your needs.” The Working Group decided to retain the checklist of products the producer can offer or sell, including non-insurance products, such as mutual funds, stocks and bonds, and certificates of deposit.

The Working Group discussed the provision in the appendix concerning whose insurance products a producer is authorized to sell, such as products from one insurer or two or more insurers. Director Froment said the Joint Trades and the CEJ both suggest in their comments that this provision be a distinct section in the appendix. The Joint Trades suggests titling the section as
“Whose Insurance Products Can I Sell to You?” The CEJ suggests titling the section as “Whose Annuities Can I Sell to You?” Director Froment said the CEJ suggests additional revisions to delete “contracted and appointed” and to revise other language to make it more consumer friendly. After discussion, the Working Group agreed to the CEJ’s suggested title and the other suggested revisions to this provision. The Working Group also agreed to delete the language concerning “My Relationship with You” because of potential consumer confusion.

The Working Group discussed the next section in the appendix, “My Compensation Structure.” Director Froment said the Joint Trades and the CEJ both suggest revising the section’s title to “How I’m Paid for My Work.” She said the Joint Trades and the CEJ differ on the language to be included in this section. Jason Berkowitz (IRI) said the Joint Trades’ suggested revisions strive to avoid potential consumer confusion. The Working Group discussed the Joint Trades and the CEJ’s suggested revisions. After discussion, the Working Group decided to retain the checkbox compensation-related language and add the following introductory paragraph: “It’s important for You to understand how I’m paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are generally paid to me by the consumer. If You have questions about how I’m paid, please ask Me.”

The Working Group next discussed the CEJ’s suggested language for inclusion in the section “Additional Information.” Mr. Birnbaum suggested the Working Group delete the requirement in section “Insurance Agent (Producer) Information” to provide the producer’s license number and instead include in this section the requirement that the producer provide his or her National Producer Number (NPN). After discussion, the Working Group agreed. Mr. Berkowitz said the Joint Trades do not believe the information the CEJ suggests including in this section is necessary. Mr. Gendron said he could support requiring the appendix to include the BrokerCheck website information. Commissioner Ommen said he could support requiring the appendix to include the information about viewing an insurance agent’s record by going on the appropriate state department of insurance’s website. After discussion, the Working Group agreed to add this additional language and the additional CEJ suggested language requiring a producer to include his or her securities license number if the producer is licensed to sell securities.

The Working Group next discussed Appendix B—Consumer Refusal to Disclose All or Partial Consumer Profile Information Form. Director Froment said the Joint Trades suggests dividing this form into two forms with one form titled “Consumer Refusal to Provide Information” and the other form, to be Appendix C, titled “Consumer Decision to Purchase an Annuity NOT Based on a Recommendation.” She asked if the Working Group supported this approach. The Working Group expressed support for taking this approach.

Director Froment said the Joint Trades and the CEJ suggest revisions to Appendix B. She suggested using the Joint Trades’ suggested revisions as the starting point for Working Group discussion. The Working Group agreed to her suggestion. Mr. Birnbaum said the CEJ’s suggested revisions are meant to make the appendix more meaningful and more consumer friendly. Mr. Berkowitz said the Joint Trades’ suggested revisions are tailored to make sure consumers understand what they are doing when they refuse to provide information that the producer needs to help to ensure a recommended product effectively meets the consumer’s financial needs, objectives and situation. The Working Group discussed the suggested revisions, with some Working Group members expressing concern that some of the suggested revisions could cause more consumer confusion. Commissioner Ommen noted the purpose of the appendices, which is to provide guidance to insurers and producers for complying with the proposed disclosure and documentation obligations. He suggested that the Working Group include the Joint Trades’ suggested revisions for Appendix B and Appendix C in the next draft of proposed revisions to Model #275 and discuss the language and any additional comments received on the language at the Life Insurance and Annuities (A) Committee’s meeting at the Fall National Meeting. There was no objection to his suggestion.

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 Austin, TX, Dec. 7, 2019. The following Working Group members participated: Jillian Froment, Chair (OH); Doug Ommen, Vice Chair (IA); Steve Ostlund (AL); Fleur McKendell (DE); Dean L. Cameron (ID); Vicki Schmidt (KS); Nour Benchaaboun (MD); Renee Campbell (MI); Matt Holman (NE); Victor Agbu (NY); Andrew Schallhorn (OK); Matt Gendron and Sarah Neil (RI); Rachel Jade-Rice (TN); and Mark Afable and Richard Wicka (WI). Also participating were: Stephen C. Taylor (DC); Karl Knable (IN); Tricia Goldsmith (OR); and Michael Humphreys (PA).


The Working Group met Nov. 5, Oct. 29, Oct. 15, Oct. 8, Sept. 17, Aug. 3, July 29 and July 23. During these meetings, the Working Group took the following action: 1) reviewed and discussed a draft of proposed revisions to the Suitability in Annuity Transactions Model Regulation (#275) developed by a technical drafting group. The technical drafting group’s draft reflected the framework developed by the Working Group during its discussions at the Summer National Meeting, its July 29 and July 23 conference calls, and its June 20 meeting in Columbus, OH to include a best interest standard of conduct in Model #275; 2) exposed a Working Group draft of proposed revisions to Model #275 for a public comment period ending Sept. 30; 3) discussed the comments received by the Sept. 30 public comment period deadline; and 4) adopted a motion to forward the revised draft of revisions to Model #275 to the Life Insurance and Annuities (A) Committee for its consideration. As part of that motion, it was noted that in sending the draft to the 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 Committee at the Spring National Meeting. The Committee chair exposed the revised draft for a public comment period ending Nov. 26.

Commissioner Schmidt acknowledged and applauded the hard work done by the Working Group chair and the Working Group to develop the Model #275 revisions.

Mr. Ostlund made a motion, seconded by Mr. Gendron, to adopt the Working Group’s Nov. 5 (Attachment Two-A), Oct. 29 (Attachment Two-B), Oct. 15 (Attachment Two-C), Oct. 8 (Attachment Two-D), Sept. 17 (Attachment Two-E), July 29 (Attachment Two-F), July 23 (Attachment Two-G) and Aug. 3 minutes (see NAIC Proceedings – Summer 2019, Life Insurance and Annuities (A) Committee, Attachment Four). The motion passed unanimously.

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

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Agenda Item #2

Discuss its Work in 2020 to Develop a Frequently Asked Questions (FAQ) Guidance Document
—Commissioner Doug Ommen (IA)
SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION (#275)

BEST INTEREST STANDARD OF CONDUCT REVISIONS

FREQUENTLY ASKED QUESTIONS

This Frequently Asked Questions (FAQ) document is intended to specifically address those questions that are likely to arise as the states work to adopt the revised Suitability in Annuity Transactions Model Regulation (#275) and to assist in the uniform implementation and enforcement of its provisions across all NAIC member jurisdictions. No provision of this FAQ document is intended to supersede the specific language in Model #275. This FAQ document is offered to any state that chooses to use it. It is not intended to expand the content of the model regulation but provides interpretive guidance regarding certain aspects of its provisions.

GENERAL

Q1. Why did the NAIC decide to revise the model to include a best interest standard of conduct?

A1. The revised model was developed, in part, in response to the U.S. Department of Labor’s (DOL) fiduciary rule, which was finalized in April 2016 but vacated in its entirety in March 2018. The DOL fiduciary rule would have expanded the scope of who is considered a fiduciary to federal Employee Retirement Income Security Act of 1974 (ERISA) retirement plans and individual retirement accounts (IRAs) to include a broader set of insurance agents, insurance brokers and insurers. Separately, the U.S. Securities and Exchange Commission (SEC) released a proposed rule package in May 2018, which included Regulation Best Interest (Reg BI). The SEC finalized Reg BI in June 2019. The final Reg BI establishes a best interest standard of conduct for broker-dealers beyond the existing suitability obligation. Recognizing the SEC’s and the DOL’s role in the regulatory landscape and believing that consumers are better protected when, to the extent possible, there is harmonization of the regulations enforced by the states, the SEC and the DOL, the NAIC revised the model to establish a framework for an enhanced standard of conduct that is more than the model’s current suitability standard but not a fiduciary standard.

Q2. How does the Harkin amendment, Section 989J of the Dodd-Frank Act apply to the revised model?

A2. Section 989J gives the states authority to regulate the sale of fixed annuities when certain conditions are met, including when the state in which the contract is issued or the state in which the insurer issuing the contract is domiciled: 1) has adopted requirements that “substantially meet or exceed the minimum requirements” established by the 2010 version of the NAIC’s Suitability in Annuity Transactions Model Regulation (#275); and 2) “adopts rules that substantially meet or exceed the minimum requirements of any successor modifications to the model regulation[]” within 5 years of the adoption by the NAIC. The only exception to this requirement is if the product is issued by an insurance company that adopts and implements practices on a nationwide basis that meet or exceed the minimum requirements established by the NAIC’s Model #275, “and any successor thereto,” and is therefore subject to examination by the State of domicile or by any other State where the insurance company conducts sales of such products.

The NAIC considers the 2020 revisions to be a successor modification to the model that exceeds the requirements of the 2010 revisions, which is reflected in a drafting note to Section 1—Purpose:
“Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") specifically refers to this model regulation as the “Suitability in Annuity Transactions Model Regulation.” Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation.”

As such, states need to work toward adopting the 2020 revisions within 5 years after its adoption by the full NAIC membership in February 2020 to maintain their authority to regulate the sale of fixed annuities.

EXEMPTIONS

Q3. What is the intent of the exemption to the revised model’s provisions under Section 4A to allow a consumer in response to a direct response solicitation to purchase an annuity product where no recommendation is made based on information collected from the consumer?

A3. This exception from the rule was in the 2010 model rule and was not changed in the 2020 version. A direct-response solicitation is a solicitation through a sponsoring or endorsing entity solely through mails, the Internet, a digital platform, or other mass communication media that does not involve a communication directed to a specific individual by a natural person, or by a simulated human voice.

BEST INTEREST STANDARD OF CONDUCT

Q4. What is the best interest standard of conduct and how would a producer or insurer satisfy it?

A4. To satisfy the best interest obligation, a producer or an insurer must satisfy the four obligations: 1) care; 2) disclosure; 3) conflict of interest; and 4) documentation.

To satisfy the four obligations, when making a recommendation, producers must:

- Know the consumer’s financial situation, insurance needs and financial objectives;
- Understand the available recommendation options;
- Have a reasonable basis to believe the recommended option effectively addresses the consumer’s financial situation, insurance needs and financial objectives;
- Communicate the basis of the recommendation to the consumer;
- Disclose their role in the transaction, their compensation, and any material conflicts of interest; and
- Document, in writing, any recommendation and the justification for such recommendation.

Q5. What types of recommendations fall under the best interest standard of conduct?

A5. All recommendations made by a producer or insurer to purchase, exchange or replace an annuity product must comply with the best interest standard of conduct. Specifically, as defined in Section 5M, a “recommendation” is advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice. A recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

Q6. Does the best interest standard of conduct apply to a producer who never meets the client, but assists a producer in making a recommendation to the client?
A6. Yes, under Section 6A(5), a producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer.

CARE OBLIGATION

Q7. What is the intent of language in Section 6A(1)(c), which states “Producers shall be held to standards applicable to producers with similar authority and licensure?”

A7. The intent of this language is to help to ensure that in any compliance or enforcement action, a producer’s recommendation is 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.

DISCLOSURE OBLIGATION

Q8. To satisfy the disclosure obligation, Section 6A(2)(a) requires a producer to provide the completed “Insurance Agent (Producer) Disclosure for Annuities” form in Appendix A prior to a recommendation, can a producer provide the form at the initial client meeting? Is the producer required to update the form and provide it again or can the producer provide it once and satisfy this obligation?

A8. TBD

CONFLICT OF INTEREST OBLIGATION

Q9. As defined in Section 5I(2), a material conflict of interest does not include cash compensation or non-cash compensation, what other type of financial interest would be considered a material conflict of interest? Is it only an ownership interest as referenced in Section 6A(3)?

A9. TBD

Q10. Under Section 6A(3), to satisfy the conflict of interest obligation, what must a producer do to identify and avoid or reasonably manage a material conflict of interest? Examples?

A10. TBD

DOCUMENTATION OBLIGATION

TBD

SUPERVISION SYSTEM

Q11. Do these revisions require insurers to set up new supervision systems to ensure producer compliance with this new standard of conduct?

A11. No, but the revisions do add additional insurer supervision requirements by requiring insurers to establish and maintain reasonable procedures in three additional areas:

- To assess whether a producer has provided to the consumer the information required by the revised model.
- To identify and address suspicious consumer refusals to provide consumer profile information.
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.

Q12. Section 6C(2)(h) requires an insurer as part of its supervision system to identify and eliminate sales contests, quotas, bonuses, and non-cash compensation based on the sale of specific annuities within a limited period of time. What type of business practices is provision intended to address?

A12. The requirements of Section 6C(2)(h) are not intended to prohibit general incentives regarding sales of an insurance company’s products where there is no emphasis on a particular product. As the provisions states, insurer business practices involving sales contests, quotas, bonuses and non-cash compensation based on the sale of a specific annuity or annuities within a specified or limited period of time are prohibited and should be identified and eliminated.

TRAINING

Q13. Do producers complete additional training on the new standard of conduct even if they have already completed the existing annuity training requirements?

A13. Yes, Section 7 requires a producer who has already completed the existing annuity training requirements prior to a state’s effective date of the revised model to complete within 6 months of that date either a four credit training course or an additional one-time one credit training course on the appropriate sales practices, replacement an disclosure requirements under the revised model. In adopting this section, a state could choose a different timeframe for this requirement.

SAFE HARBOR

TBD

ENFORCEMENT

TBD
Agenda Item #3

Discuss Any Other Matters Brought Before the Working Group—
Commissioner Doug Ommen (IA)