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 Jade-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. Hear an Update on State Activities to Adopt Revised Suitability in Annuity Transactions Model Regulation (#275)—Commissioner Doug Ommen (IA)

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

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

5. 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)
Draft: 1/30/20

Annuity Suitability (A) Working Group
Conference Call
December 19, 2019

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 Benchaboun (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.
Annuity Suitability (A) Working Group
Austin, Texas
December 7, 2019

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).

1. **Adopted its Nov. 5, Oct. 29, Oct. 15, Oct. 8, Sept. 17, July 29, July 23 and Summer National Meeting Minutes**

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.
Agenda Item #2

Hear an Update on State Activities to Adopt Revised Suitability in Annuity Transactions Model Regulation (#275)
—Commissioner Doug Ommen (IA)
SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

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Appendix B. Consumer Refusal to Provide Information
Appendix C. Consumer Decision to Purchase an Annuity Not Based on a Recommendation

Section 1. Purpose

A. The purpose of this regulation is to require producers, as defined in this regulation, to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed.

B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation or to subject a producer to civil liability under the best interest standard of care outlined in Section 6 of this regulation or under standards governing the conduct of a fiduciary or a fiduciary relationship.

Drafting Note: The language of Subsection B comes from the NAIC Unfair Trade Practices Act (#880). If a state has adopted different language, it should be substituted for Subsection B.

Drafting Note: Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) specifically refers to this model regulation as the “Suitability in Annuity Transactions Model Regulation” (#275). Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation.

Section 2. Scope

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

Section 3. Authority

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

Drafting Note: States may wish to use the Unfair Trade Practices Act (#880) as enabling legislation or may pass a law with specific authority to adopt this regulation.

Section 4. Exemptions

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

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

B. Contracts used to fund:

   (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
(2) A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;

(3) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under Section 457 of the IRC; or

(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

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

D. Formal prepaid funeral contracts.

Section 5. Definitions

A. “Annuity” means an annuity that is an insurance product under state law that is individually solicited, whether the product is classified as an individual or group annuity.

B. “Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.

C. “Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the consumer’s financial situation, insurance needs and financial objectives, including, at a minimum, the following:

(1) Age;
(2) Annual income;
(3) Financial situation and needs, including debts and other obligations;
(4) Financial experience;
(5) Insurance needs;
(6) Financial objectives;
(7) Intended use of the annuity;
(8) Financial time horizon;
(9) Existing assets or financial products, including investment, annuity and insurance holdings;
(10) Liquidity needs;
(11) Liquid net worth;
(12) Risk tolerance, including but not limited to, willingness to accept non-guaranteed elements in the annuity;
(13) Financial resources used to fund the annuity; and
(14) Tax status.

D. “Continuing education credit” or “CE credit” means one continuing education credit as defined in [insert reference in state law or regulations governing producer continuing education course approval].
E. “Continuing education provider” or “CE provider” means an individual or entity that is approved to offer continuing education courses pursuant to [insert reference in state law or regulations governing producer continuing education course approval].

F. “FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.

G. “Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

H. “Intermediary” means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer’s annuities by producers.

I. (1) “Material conflict of interest” means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation.

(2) “Material conflict of interest” does not include cash compensation or non-cash compensation.

J. “Non-cash compensation” means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support and retirement benefits.

K. “Non-guaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

L. “Producer” means a person or entity required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. For purposes of this regulation, “producer” includes an insurer where no producer is involved.

M. (1) “Recommendation” means advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice.

(2) Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

N. “Replacement” means a transaction in which a new annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer whether or not a producer is involved, that by reason of the transaction, an existing annuity or other insurance policy has been or is to be any of the following:

(1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;

(2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(4) Reissued with any reduction in cash value; or

(5) Used in a financed purchase.

Drafting Note: The definition of “replacement” above is derived from the NAIC Life Insurance and Annuities Replacement Model Regulation (#613). If a state has a different definition for “replacement,” the state should either insert the text of that definition in place of the definition above or modify the definition above to provide a cross-reference to the definition of “replacement” that is in state law or regulation.
Section 6. **Duties of Insurers and Producers**

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

1. (a) Care Obligation. The producer, in making a recommendation shall exercise reasonable diligence, care and skill to:

   (i) Know the consumer’s financial situation, insurance needs and financial objectives;

   (ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;

   (iii) Have a reasonable basis to believe the recommended option effectively addresses the consumer’s financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and

   (iv) Communicate the basis or bases of the recommendation.

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

(c) The requirements under Subparagraph (a) of this paragraph require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer’s financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. Producers shall be held to standards applicable to producers with similar authority and licensure.

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

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

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

(g) The requirements under Subparagraph (a) of this paragraph apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar producer enhancements, if any.
(h) The requirements under Subparagraph (a) of this paragraph do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

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

(j) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:

(i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

(ii) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

(iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

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

(2) Disclosure obligation.

(a) Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to Appendix A:

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

(ii) An affirmative statement on whether the producer is licensed and authorized to sell the following products:
   
   (I) Fixed annuities;
   
   (II) Fixed indexed annuities;
   
   (III) Variable annuities;
   
   (IV) Life insurance;
   
   (V) Mutual funds;
   
   (VI) Stocks and bonds; and
   
   (VII) Certificates of deposit;
Suitability in Annuity Transactions Model Regulation

(iii) An affirmative statement describing the insurers the producer is authorized, contracted (or appointed), or otherwise able to sell insurance products for, using the following descriptions:

(I) From one insurer;

(II) From two or more insurers; or

(III) From two or more insurers although primarily contracted with one insurer.

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

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

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

(b) Upon request of the consumer or the consumer’s designated representative, the producer shall disclose:

(i) A reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages; and

(ii) Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and

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

Drafting Note: If a state has adopted the NAIC Annuity Disclosure Model Regulation (#245), the state should insert an additional phrase in Subparagraph (c) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation (#245).

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

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

(a) Make a written record of any recommendation and the basis for the recommendation subject to this regulation;

(b) Obtain a consumer signed statement on a form substantially similar to Appendix B documenting:

(i) A customer’s refusal to provide the consumer profile information, if any; and
(ii) A customer’s understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and

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

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

(5) Application of the best interest obligation. Any requirement applicable to a producer under this subsection shall apply to every producer who has exercised material control or influence in the making of a 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. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

B. Transactions not based on a recommendation.

(1) Except as provided under Paragraph (2), a producer shall have no obligation to a consumer under Subsection A(1) related to any annuity transaction if:

(a) No recommendation is made;

(b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

(c) A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or

(d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.

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

C. Supervision system.

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

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

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

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

(c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its producers;
(d) The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer’s financial situation, insurance needs and financial objectives. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

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

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

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

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

Drafting Note: The intent of Subparagraph (h) is to prohibit sales contests, sales quotas, bonuses and non-cash compensation based on the sale of a particular product within a limited period of time, but not to prohibit general incentives regarding the sales of a company’s products with no emphasis on any particular product.

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

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

(b) An insurer’s supervision system under this subsection shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:

(i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
(ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(4) An insurer is not required to include in its system of supervision:

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

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

D. Prohibited Practices. Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:

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

(2) Filing a complaint; or

(3) Cooperating with the investigation of a complaint.

E. Safe harbor.

(1) Recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements under this regulation. This subsection applies to all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue. However, nothing in this subsection shall limit the insurance commissioner’s ability to investigate and enforce the provisions of this regulation.

Drafting Note: Non-compliance with comparable standards means that the recommendation or sale is subject to compliance with the requirements of this regulation.

(2) Nothing in Paragraph (1) shall limit the insurer’s obligation to comply with Section 6C(1) of this regulation, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(3) For paragraph (1) to apply, an insurer shall:

(a) Monitor the relevant conduct of the financial professional seeking to rely on Paragraph (1) or the entity responsible for supervising the financial professional, such as the financial professional’s broker-dealer or an investment adviser registered under federal [or state] securities laws using information collected in the normal course of an insurer’s business; and

(b) Provide to the entity responsible for supervising the financial professional seeking to rely on Paragraph (1), such as the financial professional’s broker-dealer or investment adviser registered under federal [or state] securities laws, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.

(4) For purposes of this subsection, “financial professional” means a producer that is regulated and acting as:

(a) A broker-dealer registered under federal [or state] securities laws or a registered representative of a broker-dealer;
Suitability in Annuity Transactions Model Regulation

(b) An investment adviser registered under federal [or state] securities laws or an investment adviser representative associated with the federal [or state] registered investment adviser; or

(c) A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.

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

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

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

(b) With respect to investment advisers registered under federal [or state] securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940 [or applicable state securities law], including but not limited to, the Form ADV and interpretations; and

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

Drafting Note: State-registered investment advisers in this safe harbor are included in brackets so that each individual state that implements this model regulation may determine whether to include the state-regulated investment advisers. Given the varying treatment of annuities, particularly variable annuities, under state law, the varying structures of state securities and insurance departments, and the varying levels of cooperation between the two agencies, this is a decision best made in each individual state.

Section 7. Producer Training

A. A producer shall not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer’s standards for product training. A producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

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

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

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

(3) The training required under this subsection shall include information on the following topics:

(a) The types of annuities and various classifications of annuities;
(b) Identification of the parties to an annuity;
(c) How product specific annuity contract features affect consumers;
(d) The application of income taxation of qualified and non-qualified annuities;
(e) The primary uses of annuities; and
(f) Appropriate standard of conduct, sales practices, replacement and disclosure requirements.

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

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

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

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

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

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

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

(11) An insurer shall verify that a producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.
Section 8. Compliance Mitigation; Penalties; Enforcement

A. An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its producer, the commissioner may order:

(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this regulation by the insurer, an entity contracted to perform the insurer’s supervisory duties or by the producer;

(2) A general agency, independent agency or the producer to take reasonably appropriate corrective action for any consumer harmed by the producer’s violation of this regulation; and

(3) Appropriate penalties and sanctions.

B. Any applicable penalty under [insert statutory citation] for a violation of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

Drafting Note: Subsection B above is intended to be consistent with the commissioner’s discretionary authority to determine the appropriate penalty for a violation of this regulation. The language of Subsection B is not intended to require that a commissioner impose a penalty on an insurer for a single violation of this regulation if the commissioner has determined that such a penalty is not appropriate.

Drafting Note: A state that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, “shall” should be substituted for “may” in the same sentence. States should consider inserting a reference to the NAIC Unfair Trade Practices Act (#880) or the state’s statute that authorizes the commissioner to impose penalties and fines.

C. The authority to enforce compliance with this regulation is vested exclusively with the commissioner.

Section 9. Recordkeeping

A. Insurers, general agents, independent agencies and producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions for [insert number] years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of a producer.

Drafting Note: States should review their current record retention laws and specify a time period that is consistent with those laws. For some states this time period may be five (5) years.

B. Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

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

Section 10. Effective Date

The amendments to this regulation shall take effect [X] months after the date the regulation is adopted or on [insert date], whichever is later.
APPENDIX A

INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES
Do Not Sign Unless You Have Read and Understand the Information in this Form

Date: ________________________

INSURANCE AGENT (PRODUCER) INFORMATION (‘‘Me”, “I”, “My”)

First Name: _________________________________________ Last Name: _____________________________________

Business/Agency Name: ___________________________________ Website: ___________________________________

Business Mailing Address: __________________________________________________________________________

Business Telephone Number: __________________________________________________________________________

Email Address: ______________________________________________________________________________________

National Producer Number in [state]: __________________________________________________________________

CUSTOMER INFORMATION (‘‘You”, “Your”)

First Name: _______________________________________ Last Name: ________________________________________

What Types of Products Can I Sell You?
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.

I offer the following products:

☐ Fixed or Fixed Indexed Annuities  ☐ Variable Annuities  ☐ Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any non-insurance financial products that I am licensed and authorized to provide advice about or to sell.

☐ Mutual Funds  ☐ Stocks/Bonds  ☐ Certificates of Deposits

Whose Annuities Can I Sell to You?

I am authorized to sell:

<table>
<thead>
<tr>
<th>☐ Annuities from Only One (1) Insurer</th>
<th>☐ Annuities from Two or More Insurers</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Annuities from Two or More Insurers although I primarily sell annuities from: ___________________________</td>
<td></td>
</tr>
</tbody>
</table>
How I’m Paid for My Work:
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.

Depending on the particular annuity You buy, I will or may be paid cash compensation as follows:

☐ Commission, which is usually paid by the insurance company or other sources. If other sources, describe: ____________________.

☐ Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.

☐ Other (Describe): ____________________________________________________________.

If You have questions about the above compensation I will be paid for this transaction, please ask me.

I may also receive other indirect compensation resulting from this transaction (sometimes called “non-cash” compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or other sources.

Drafting Note: This disclosure may be adapted to fit the particular business model of the producer. As an example, if the producer only receives commission or only receives a fee from the consumer, the disclosure may be refined to fit that particular situation. This form is intended to provide an example of how to communicate producer compensation, but compliance with the regulation may also be achieved with more precise disclosure, including a written consulting, advising or financial planning agreement.

Drafting Note: The acknowledgement and signature should be in immediate proximity to the disclosure language.

By signing below, You acknowledge that You have read and understand the information provided to You in this document.

________________________________________________
Customer Signature

________________________________________________
Date

________________________________________________
Agent (Producer) Signature

________________________________________________
Date
APPENDIX B

CONSUMER REFUSAL TO PROVIDE INFORMATION

Do Not Sign Unless You Have Read and Understand the Information in this Form

Why are You being given this form?

You’re buying a financial product – an annuity.

To recommend a product that effectively meets Your needs, objectives and situation, the agent, broker, or company needs information about You, Your financial situation, insurance needs and financial objectives.

If You sign this form, it means You have not given the agent, broker, or company some or all the information needed to decide if the annuity effectively meets Your needs, objectives and situation. You may lose protections under the Insurance Code of [this state] if You sign this form or provide inaccurate information.

Statement of Purchaser:

☐ I REFUSE to provide this information at this time.
☐ I have chosen to provide LIMITED information at this time.

________________________________________________
Customer Signature

________________________________________________
Date
APPENDIX C

Consumer Decision to Purchase an Annuity NOT Based on a Recommendation

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

Why are You being given this form? You are buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company has the responsibility to learn about You, your financial situation, insurance needs and financial objectives.

If You sign this form, it means You know that you’re buying an annuity that was not recommended.

Statement of Purchaser:

I understand that I am buying an annuity, but the agent, broker or company did not recommend that I buy it. If I buy it without a recommendation, I understand I may lose protections under the Insurance Code of [this state].

________________________________________________
Customer Signature

________________________________________________
Date

________________________________________________
Agent/Producer Signature

________________________________________________
Date
Agenda Item #3

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
July 27, 2020

The Honorable Doug Ommen
Chairman
Annuity Suitability Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

Re: Draft Frequently Asked Questions Document

Dear Commissioner Ommen:

On behalf of the Independent Insurance Agents and Brokers of America (IIABA), I write to comment on the draft Frequently Asked Questions (FAQ) document designed to provide guidance concerning the intended effect of some of the revisions recently made to the Suitability in Annuity Transactions Model Regulation. Our comments below focus on two issues.

Section 4(A) / Exemption for “Direct Response Solicitations”

IIABA welcomes the working group’s focus on Section 4(A), which provides a complete exemption from the model’s requirements for “[d]irect response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation.” We believe this exemption is entirely unnecessary and contrary to the underlying goals of the model, and our hope is that a discussion of the intent and effect of this provision will highlight its unwarranted and potentially nature. As you review this particular provision, we urge you to consider the following:

- The model establishes requirements and obligations for a person who recommends an annuity. A mere advertisement or an interaction that does not include a recommendation is not covered by the model in the first place and does not require an exemption of this nature.

- The model includes a separate provision – Section 6(B) – that addresses transactions and provides a limited exemption when there is no recommendation, and this provision further obviates the need for a Section 4(A). Section 6(B) is a narrower and more thoughtfully crafted provision, and it makes clear that an insurer’s issuance of an annuity must be reasonable under the circumstances actually known to the insurer. The Section
4(A) exemption imposes no similar requirement and thus allows the issuance of annuities in instances where the insurer knows it would be unreasonable to do so.

- There are only benefits – and no adverse effects – for states that choose not to adopt or retain Section 4(A). There are no transactions that warrant an exemption of this nature that would be covered if the provision was excluded.

- The FAQ attempts to explain the exemption by noting that “[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.” This does not, however, explain the provision and only adds to the confusion. This explanation seems to suggest, for example, that interactions that take place exclusively via electronic means are somehow completely exempt from the model, even when a recommendation is made. We are also unclear what the references to a “sponsoring or endorsing entity” (which are not found in the regulation itself) are intended to address.

**Section 6(E) / Safe Harbor**

IIABA also appreciates the working group’s consideration of Section 6(E) and welcomes any additional clarity that can be provided. The previous provision was narrowly tailored to address instances where a producer might have been subject to multiple regulatory frameworks in the same transaction and offered a limited exemption, but the new safe harbor was significantly revised and expanded. This new provision has generated questions among our state associations and members, and below are some of the common inquiries we have received.

- Does Section 6(E) allow a person without the appropriate producer licensing credentials to sell, solicit, negotiate, or recommend annuities?

- Is a person utilizing Section(E) exempt from the training requirements of Section 7?

- Does Section 6(E) provide an exemption from some or all of the requirements found in Sections 6(A) and 6(D), including instances when the other relevant standard does not impose an identical or analogous requirement?

- Section 6(E) makes clear that it does not relieve insurers of the obligations under Section 6(C)(1), but does the provision exempt companies from all or some of the robust duties and prohibitions established by Section 6(C)(2) and Section (D)?

- Section 6(E) makes reference to the authority of regulators to “investigate and enforce the provisions of this regulation,” but what does this mean in practical terms if a financial professional chooses to comply with a different standard? What provisions of the regulation would apply to an individual who is largely exempt from the regulation itself, and how and by what standard will a regulator practically take enforcement action against such a person?
Conclusion

IIABA thanks you for the opportunity to submit these comments. We are happy to assist your working group’s consideration of these issues in any way you deem appropriate. Please feel free to contact me at 202-302-1607 or via email at wes.bissett@iiaba.net with any questions or if we can assist you in any manner.

Very truly yours,

Wesley Bissett  
Senior Counsel, Government Affairs
July 27, 2020

Via Electronic Mail to jmattthews@naic.org

The Honorable Doug Ommen
Commissioner, Iowa Insurance Division
Chairman, NAIC Annuity Suitability (A) Working Group
Two Ruan Center
601 Locus, 4th Floor
Des Moines, IA 50309

Re: Draft Frequently Asked Questions re Best Interest Standard of Conduct Revisions to the NAIC Suitability in Annuity Transactions Model Regulation

Dear Commissioner Ommen:

I am writing on behalf of the National Association of Insurance and Financial Advisors (NAIFA) to provide NAIFA’s comments on the draft of Frequently Asked Questions concerning the recent amendments to the NAIC Suitability in Annuity Transactions Model Regulation (the Model).

As you know, NAIFA worked closely with the Working Group during its development of the amendments to the Model. NAIFA supports the amended Model and promoting the adoption of these amendments in the states is a top state-level advocacy priority for NAIFA. The development of a “frequently asked questions” document should be a helpful tool for states as they consider these amendments, and we commend the Working Group for its efforts on this project.

Our one comment at the current time concerns Question 3, Exemptions. The draft answer to this question, while technically consistent with the language in section 4 A of the Model, still seems to indicate that if a direct response solicitation is i) not made by “a natural person, or by a simulated human voice” and ii) includes a recommendation that is not based on information collected from the consumer (perhaps a recommendation based on zip code, age and/or other information?), than that situation, and the recommendation made, would be exempt from the
requirements of the regulation. This provision in the Model and the guidance given by this FAQ creates an uneven playing field between the activities of direct response entities versus producers by giving direct response companies the ability, under certain circumstances, to make recommendations that would not be covered by the Model.

NAIFA fails to see any public policy rationale for this exemption or for this FAQ which promotes this result. If one of the primary purposes for the amended Model is to apply an enhanced standard of conduct to recommendations to purchase annuities, what is the purpose for carving out an exemption for a specific type of recommendation? NAIFA recommends either that the Section 4A exemption i) be deleted from the Model or ii) be revised to read as follows: “A. Sales or purchases of an annuity where no recommendation is made.”

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We appreciate your consideration of this letter and our comments; please email or call me if you have any questions.

Sincerely,

[Signature]

Gary A. Sanders
Counsel and Vice President, Government Relations
Agenda Item #4

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