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Model #275

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

SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

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Section 1. Purpose

- A. The purpose of this regulation is to require producers, 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 and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately effectively addressed.
- B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation 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. If a State has adopted different language, it should be substituted for subsection B.

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

Section 2. Scope

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

Section 3. Authority

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

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

Section 4. Exemptions

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

- A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;
- B. Contracts used to fund:
 - (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - (2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
 - (3) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under section 457 of the IRC; or
 - (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
- C.(5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- D.(6) Formal prepaid funeral contracts.

Section 5. Definitions

- A. “Annuity” means an annuity that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.
- B. “Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.
- C. “Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the consumer’s financial situation, insurance needs and financial objectives, including, at a minimum, the following:
 - (1) Age;
 - (2) Annual income;
 - (3) Financial situation and needs, including debts and other obligations;
 - (4) Financial experience;
 - (5) Insurance needs;
 - (6) Financial objectives;
 - (7) Intended use of the annuity;
 - (8) Financial time horizon;
 - (9) Existing assets or financial products, including investment, annuity and insurance holdings;
 - (10) Liquidity needs;
 - (11) Liquid net worth;

(12) Risk tolerance, including but not limited to, willingness to accept non-guaranteed elements in the annuity;

(13) Financial resources used to fund the annuity; and

(14) Tax status.

BD. “Continuing education credit” or “CE credit” means one continuing education credit as defined in [insert reference in State law or regulations governing producer continuing education course approval].

CE. “Continuing education provider” or “CE provider” means an individual or entity that is approved to offer continuing education courses pursuant to [insert reference in State law or regulations governing producer continuing education course approval].

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

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

~~F.~~ ~~“Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.~~

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

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

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

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

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

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

GM. (1) “Recommendation” means advice provided by ~~an insurance a producer, or an insurer where no producer is involved,~~ to an individual consumer that was intended to result or does result ~~results or~~ in a purchase, an exchange or a replacement of an annuity in accordance with that advice.

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

HN. “Replacement” means a transaction in which a new ~~policy or contract~~ annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer ~~if there is no whether or not a producer is involved,~~ that by reason of the transaction, an existing annuity or other insurance ~~policy or contract~~ has been or is to be any of the following:

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

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- (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
- (3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
- (4) Reissued with any reduction in cash value; or
- (5) Used in a financed purchase.

Drafting Note: The definition of “replacement” above is derived from the NAIC Life Insurance and Annuities Replacement Model Regulation. If a State has a different definition for “replacement,” the State should either insert the text of that definition in place of the definition above or modify the definition above to provide a cross-reference to the definition of “replacement” that is in State law or regulation.

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

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

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

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

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

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

- (1) (a) Care Obligation. The producer, in making a recommendation shall exercise reasonable diligence, care and skill to:
- (i) Know the consumer's financial situation, insurance needs and financial objectives;
 - (ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;
 - (iii) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and
 - (iv) Communicate the basis or bases of the recommendation.
- (b) The requirements under subparagraph (a) of this paragraph include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.
- (c) The requirements under subparagraph (a) of this paragraph require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. 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 the "Producer Relationship Disclosure Form" in Appendix A:
 - (i) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;
 - (ii) An affirmative statement on whether the producer is licensed and authorized to sell the following products:
 - (I) Fixed annuities;
 - (II) Fixed indexed annuities;
 - (III) Variable annuities;
 - (IV) Life insurance;
 - (V) Variable life insurance;
 - (VI) Mutual funds;
 - (VII) Stocks and bonds;
 - (VIII) Securities options;
 - (IX) Certificates of deposit; and
 - (X) Other relevant securities, insurance or investments (Describe): _____;
 - (iii) An affirmative statement describing the insurers the producer is authorized, contracted (or appointed), or otherwise able to sell insurance products for, using the following descriptions:
 - (I) One insurer or insurance holding company group;
 - (II) From multiple insurers; or

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(III) From multiple insurers although I am primarily contracted with one insurer.

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

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

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

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

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(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

(c4) Prior to or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe ~~The~~the consumer has been ~~reasonably~~ informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risk~~;~~

Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1)-subparagraph (c) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.

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

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

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

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

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

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

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

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

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

(b) ~~Obtain a consumer signed statement on a form substantially similar to the "Consumer Refusal to Disclose All or Partial Consumer Profile Information" form in Appendix B documenting:~~

(i) ~~A customer's refusal to provide the consumer profile information, if any; and~~

(ii) ~~A customer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and~~

(c) ~~Obtain a consumer signed statement acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's recommendation.~~

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

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

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

(5) ~~Application of the best interest obligation. Any requirement applicable to a producer under this subsection shall apply to every producer who has exercised material control or influence in the making of a recommendation and has received 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.~~

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DB. Transactions not based on a recommendation.

(1) Except as provided under paragraph (2) ~~of this subsection, neither an insurance producer, nor an insurer, shall have any~~ obligation to a consumer under subsection A(1) ~~or C~~ related to any annuity transaction if:

(a) No recommendation is made;

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

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

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

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

C. Supervision system.

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

~~E. An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:~~

- (1) ~~Make a record of any recommendation subject to section 6A of this regulation;~~
- (2) ~~Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and~~
- (3) ~~Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.~~

F. ~~(1)(2)~~ An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its ~~insurance~~ producers' compliance with this regulation, including, but not limited to, the following:

- (a) The insurer shall establish and maintain reasonable procedures to inform its ~~insurance~~ producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant ~~insurance~~ producer training manuals;
- (b) The insurer shall establish and maintain standards for ~~insurance~~ producer product training and shall establish and maintain reasonable procedures to require its ~~insurance~~ producers to comply with the requirements of section 7 of this regulation;
- (c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its ~~insurance~~ producers;
- (d) The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure ~~that~~ there is a reasonable basis to determine that ~~a recommendation is suitable~~the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;
- (e) The insurer shall establish and maintain reasonable procedures to detect recommendations that are not ~~suitable~~in compliance with subsections A, B, D and E. This may include, but is not limited to, confirmation of the consumer's suitability~~consumer profile~~ information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming the suitability~~consumer profile~~ information or other required information under this section after issuance or delivery of the annuity; ~~and~~
- (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;

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~~(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

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~~(f)(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.

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~~(2)(3)~~ (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under ~~paragraph (1)~~this subsection. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.

(b) An insurer's supervision system under ~~paragraph (1)~~this subsection shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:

(i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

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

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

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

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

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

(2) Filing a complaint; or

(3) Cooperating with the investigation of a complaint.

~~HE.~~ Safe harbor.

(1) Recommendations and sales of annuities~~Sales~~ made in compliance with comparable standards ~~FINRA requirements pertaining to suitability and supervision of annuity transactions~~ shall satisfy the requirements under this regulation. This subsection applies to ~~FINRA broker-dealer~~all

recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard regardless of whether the particular recommendation or sale is required to otherwise comply with such comparable standard if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner's ability to investigate and enforce (including investigate) the provisions of this regulation.

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

~~(2)~~ 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.

~~(2)~~(3) For paragraph (1) to apply, an insurer shall:

- (a) Monitor the ~~FINRA member broker-dealer~~ relevant conduct of the financial professional seeking to rely on paragraph (1) or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal [or state] securities laws using information collected in the normal course of an insurer's business; and
- (b) Provide to the ~~FINRA member broker-dealer~~ entity responsible for supervising the financial professional seeking to rely on paragraph (1), such as the financial professional's broker-dealer or investment adviser registered under federal [or state] securities laws, information and reports that are reasonably appropriate to assist the ~~FINRA member broker-dealer~~ such entity to maintain its supervision system.

~~(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;
- ~~(b)~~ An investment adviser registered under federal [or state] securities laws or an investment adviser representative; or
- ~~(c)~~ A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or Section 4975(f)(8)(J)(i) of the Internal Revenue Code (IRC).

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

~~(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

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 they should be included. 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 entities, this is a decision best made in each individual state between the state securities administrator and commissioner of the insurance division.

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

Section 7. Insurance Producer Training

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

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

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

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

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

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

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

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

(6) A producer who has completed an annuity training course approved by the department of insurance prior to [insert effective date of amended regulation] shall, within six (6) months after [insert effective date of amended regulation], complete either:

(a) ~~A new four (4) credit training course approved by the department of insurance after [insert effective date of amended regulation]; or~~

(b) ~~An additional one-time one (1) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider on appropriate sales practices, replacement and disclosure requirements under this amended regulation.~~

~~(6)(7)~~ Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with [insert reference to State law or regulations governing producer continuing education course approval].

~~(7)(8)~~ Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with [insert reference to State law or regulations governing to producer continuing education course approval].

~~(8)(9)~~ The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.

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

~~(9)(11)~~ An insurer shall verify that ~~an insurance~~ 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 ~~insurance~~ producer, the commissioner may order:

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

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

(3) Appropriate penalties and sanctions.

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

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

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

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

Section 9. ~~{Optional}~~ Recordkeeping

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

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

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

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

Section 10. Effective Date

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

The Annuity Suitability (A) Working Group will review and discuss the comments received on Appendix A and Appendix B during a conference call set for Thursday, Dec. 19.

APPENDIX A

PRODUCER RELATIONSHIP DISCLOSURE FORM

Date: _____

INSURANCE AGENT/PRODUCER INFORMATION ("Me", "I", "My")

First Name: _____ Last Name: _____

Firm Name: _____ Website: _____

Business Mailing Address: _____

Business Telephone Number: _____

Email Address: _____

Insurance License # _____

CLIENT INFORMATION ("You", "Your")

First Name: _____ Last Name: _____

INSURANCE AUTHORIZATION

I am licensed and authorized to sell insurance products, including annuities in [State] in accordance with state laws. I offer the following products:

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

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

- Products from ONLY ONE INSURER or Insurance Holding Company Group Products from Multiple Insurers
- Products from Multiple Insurers although I am primarily contracted with one insurer.

My Relationship with You:

- One-Time Transaction
 On-Going Relationship

My Compensation Structure:

- Commissioned Transaction

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An asset under management fee

Other, please describe: _____

I am likely to be compensated by the following sources for this relationship:

Insurance Company

The Consumer

Third parties such as an Independent Marketing Organization (IMO) related to the Insurer

Other Sources _____

ADDITIONAL INFORMATION

You may obtain further information regarding the cash compensation paid to me.

Client Signature

Date

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APPENDIX B

CONSUMER REFUSAL TO DISCLOSE ALL OR PARTIAL CONSUMER PROFILE INFORMATION FORM

I understand that should I decline to provide the requested information, or should I provide inaccurate information, I am limiting the protection afforded me by the Insurance Code of this [state] regarding this purchase.

- I REFUSE to provide this information at this time.
- I have chosen to provide LIMITED information at this time.
- My annuity purchase IS NOT BASED on the recommendation of this producer or the insurer.

Client Signature

Date

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