

**American Bankers Association  
Independent Insurance Agents and Brokers of America  
National Association of Health Underwriters  
National Association of Professional Insurance Agents**

April 27, 2018

The Honorable Dean Cameron  
Idaho Department of Insurance  
700 West State Street, 3<sup>rd</sup> Floor  
Boise, Idaho 83720

The Honorable Doug Ommen  
Iowa Insurance Division  
601 Locust Avenue, 4<sup>th</sup> Floor  
Des Moines, Iowa 50309

**Re: Potential Revisions to the NAIC Annuity Suitability Model Regulation**

Dear Director Cameron and Commissioner Ommen:

On behalf of the national trade associations identified above, we write to you in your capacities as Chairman and Vice Chairman of the National Association of Insurance Commissioners (NAIC) Annuity Suitability Working Group and in response to your recent request for comment. Our organizations collectively represent hundreds of thousands of insurance producers, and our members would be the stakeholders most affected by any revisions to the *Suitability in Annuity Transactions Model Regulation*. We recognize your good intentions and thank you for the opportunity to comment on these important issues. We also thank you for your consideration of our perspective and look forward to working with you and commenting further in the weeks and months to come.

**Initial Comments**

Our coalition of associations wants to be responsive to your request for input, but it has been a challenge for us to devise solutions and suggestions for addressing problems that have not been identified. Some have called for dramatic and extensive revisions to the rules that apply to annuity transactions, but our experience suggests that many of these proposals are unnecessary, excessive, and disproportionate in nature. Consumers are very well-protected today by the combination of a strong insurance regulatory framework and robust industry competition, and examples of misconduct are rare. A case has not been made for sweeping revisions to the existing model, and we encourage the working group to identify the specific marketplace problems that regulators see and allow us to propose solutions to any regulatory gaps. Our associations certainly share your commitment to protecting consumers from improper conduct where it exists, but we also want to avoid a rush to judgement or an unwarranted regulatory response that could cause disruption in the marketplace and carry adverse and unintended consequences for consumers and the industry.

The most commonly articulated justification for reopening the existing model is that it needs to be revised to harmonize insurance producer requirements with those that may ultimately be established for investment advisers and broker-dealers by the U.S. Securities and Exchange Commission (SEC). Regardless of the merits of extending the application of any federal regulations to all annuity transactions (and to fixed annuity products in particular), the reality is that the pursuit of harmony with SEC rules is simply unachievable at this time. The SEC only recently released its voluminous proposed package of new requirements for investment advisers and

broker-dealers, and it will be challenging to meaningfully consider whether the NAIC should alter its model in response to the SEC's action until the Commission promulgates its final rule. To the extent that potential harmonization with SEC investment adviser and broker-dealer regulations is a potential goal for the working group, the SEC proposal is an unfinished product at the moment.

### **A “Best Interest” Standard vs. Clear and Objective Requirements**

Most notably, our coalition of organizations writes to express strong opposition to the establishment of a so-called “best interest” standard of care for all annuity transactions and to reiterate the reasons why such an approach is misguided. Some regulators and even insurer representatives have suggested that insurance producers should be required to make recommendations concerning the purchase of an annuity that are “in the best interest” of a consumer. Requiring producers by law to act in the best interest of a customer may seem innocuous and unremarkable, but the reality is that such a standard is abstract, nebulous, subjective, and replete with adverse consequences. Mandating adherence to such a standard in connection with fixed annuity sales will not alter the manner in which producers serve the needs of customers or result in an improved consumer experience, and it is unclear what new actions, steps, or tasks an agent would need to perform that are not routinely performed today.

Imposing a best interest or similar standard upon the producer community in this manner would result in regulatory uncertainty and produce increased litigation. Determinations about what such a vague standard means and how it should be applied would vary dramatically, and the mandate could be interpreted in conflicting and inconsistent ways from state to state, court to court, and regulator to regulator. This lack of consistency and clarity is troubling, and it will open the door to second-guessing and retrospective scrutiny years after an initial recommendation is made. Such a standard will increase the costs and legal exposure of agents without providing commensurate benefit to consumers. Its contentious nature would also jeopardize efforts to adopt a revised model on a consistent and uniform basis at the state level.

If confronted with amorphous standards, higher compliance and insurance costs, and increased liability exposure, many main street producers can be expected to curtail or simply cease any annuity-related activities. A significant number of businesses, especially smaller entities, had ended or were wrapping up their engagement in the retirement space when the Fifth Circuit Court of Appeals struck down the U.S. Department of Labor's controversial Fiduciary Rule, and similar marketplace outcomes in the annuity world can be expected if an analogous standard is established for insurance producers. This will be especially true for agencies and providers that do not generate a substantial amount of revenue from annuity sales, and it could force many such entities to stop offering annuity products altogether. With a smaller universe of professionals serving the financial needs of the general public, far fewer consumers will have the opportunity to access the variety of financial products and quality of personalized financial assistance available to affluent Americans. Such a drastic measure will reduce competition and have severe consequences for many small businesses and the consumers who rely on these qualified and accountable providers for their financial needs.

Rather than establish a best interest or some other abstract standard of care, our associations urge the working group to consider an alternative and more straightforward approach. We urge you to identify any specific marketplace problems or regulatory gaps that exist and respond to those items with clear and objective requirements that producers must adhere to. The adoption of a nebulous standard of care serves no meaningful purpose, and it creates regulatory uncertainty. Revisions to the model should not require guesswork and speculation from producers, and any amendments should instead make clear what actions and compliance measures are required. To

that end, our associations would welcome the opportunity to assist the working group with devising consumer protection solutions directed at a specifically identified regulatory gap.

For example, some have suggested that consumers are confused by or unaware of the manner in which producers are compensated in annuity transactions, and the working group could implement an objective and process-based approach for addressing these issues. The working group could consider the implementation of new requirements that reasonably mandate the disclosure of the sources and types of compensation received by a producer, the nature of the producer's role in a transaction, how the customer can request additional information, and other relevant information. Similarly, producers could also be required to disclose any material ownership interests they have in the insurer issuing the annuity contract. We recommend this type of tailored approach because it would respond to regulatory gaps that may be identified, bolster and build upon the existing suitability framework, and make the "rules of the road" clear and unambiguous to producers.

Any revisions to the existing model should also offer benefits to consumers that outweigh any new burdens or costs imposed on the industry and any adverse marketplace effects that arise. Any new mandates imposed on the producer community will have an impact on the operations of many agencies, and they might also result in fewer producers offering annuities and hinder consumer choice and access to annuity products. The more burdensome, arduous, and expensive the sale of an annuity becomes, the fewer providers there will be to offer annuities. These effects must be considered as revisions to the model are contemplated.

## **Conclusion**

On behalf of our respective organizations and insurance producers across the country, we sincerely thank you for the opportunity to submit these comments. We are happy to assist your further consideration of these issues in any way you deem appropriate. Please contact us at any time if you have any questions or if we can assist you in any manner.

Very truly yours,

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Independent Insurance Agents & Brokers of America

Sarah Ferman  
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