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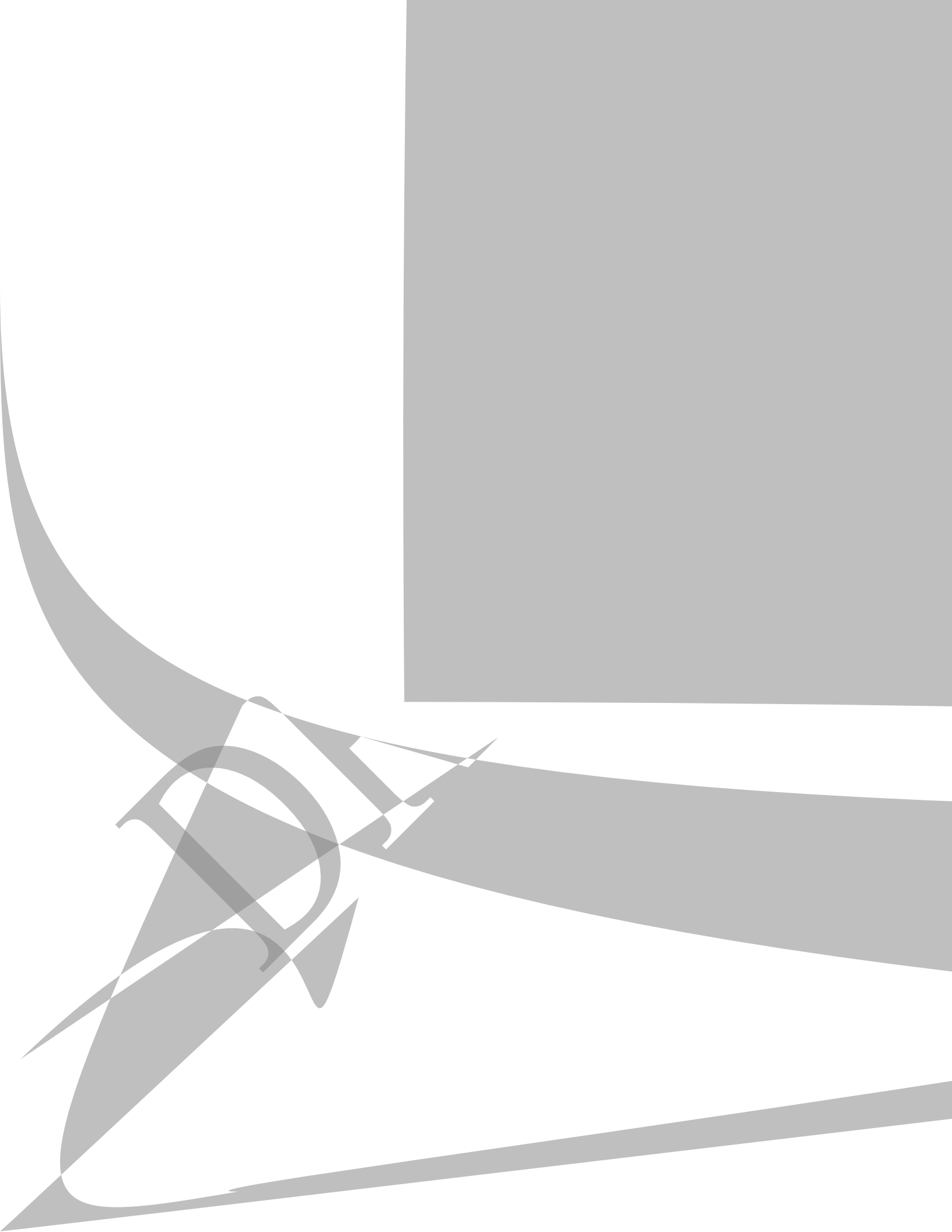


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## STANDARDS MARKETING AND SALES

### Standard 2

**The insurer's rules pertaining to producer requirements in connection with replacements are in compliance with applicable statutes, rules and regulations.**

**Apply to:** All life and annuity products

**Priority:** Essential

#### Documents to be Reviewed

\_\_\_\_\_ Applicable statutes, rules and regulations

\_\_\_\_\_ Replacement register/Data

\_\_\_\_\_ Policy/Underwriting files

\_\_\_\_\_ Loan and surrender files

Others Reviewed

\_\_\_\_\_

\_\_\_\_\_

#### NAIC Model References

*Life Insurance and Annuities Replacement Model Regulation* (as adopted 1998) (#613)

*Suitability in Annuity Transactions Model Regulation* (#275)

~~*Suitability of Sales of Life Insurance and Annuities White Paper*~~

*Military Sales Practices Model Regulation* (#568)

#### Review Procedures and Criteria

Review loan and surrender files to determine if producers have identified replacement transactions on applications.

Review replacement register and policy/underwriting files to determine if required disclosure forms have been submitted on replacement transactions.

Review policy/underwriting files to confirm receipt of sales material or required statement. Copies of sales material other than regulated entity-approved sales material, if permitted, must also be in the file.

Review replacement disclosure forms for completeness and signatures, as required.

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Ensure that producer written documentation regarding suitability contains adequate and complete information to demonstrate that there is a reasonable basis to believe all of the following:

- 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, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk. (Note: If the applicable state has adopted the *Annuity Disclosure Model Regulation* (#245), examiners should be aware that the criteria of this examination standard are intended to supplement and not replace the disclosure requirements of the *Annuity Disclosure Model Regulation* (#245));
- The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;
- 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
- In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:
  - 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;
  - The consumer would benefit from product enhancements and improvements; and
  - The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

Review policy/underwriting files to determine that prior to the execution of a replacement of an annuity resulting from a recommendation, an insurance producer has made reasonable efforts to obtain the consumer's suitability information.

Examiners





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**STANDARDS  
MARKETING AND SALES**

**Standard 4**  
**An illustration used in the sale of a policy contains all required information and is delivered in accordance with statutes, rules and regulations.**

**Apply to:** All life products

**Priority:** Essential

**Documents to be Reviewed**

- \_\_\_\_\_ Applicable statutes, rules and regulations
- \_\_\_\_\_ Actuarial records
- \_\_\_\_\_ All documents related to the development of crediting rates used in illustrations
- \_\_\_\_\_ Underwriting file

**Others Reviewed**

- \_\_\_\_\_
- \_\_\_\_\_

**NAIC Model References**

- Life Insurance Illustrations Model Regulation (#582) and Actuarial Guideline XLIX—The Application of the Life Illustrations Model Regulation to Policies with Index Based Interest (AG 49)*
- Universal Life Insurance Model Regulation (#585)*
- Variable Life Insurance Model Regulation (#270)*
- Life Insurance Disclosure Model Regulation (#580)*
- ~~*Disclosure for Small Face Amount Life Insurance Policies Model Act (#605)*~~

**Review Procedures and Criteria**

Note: Some policies may be deemed to be sold without an illustration.

If a jurisdiction continues to require surrender cost indices, ensure it is appropriately disclosed in the Statement of Policy Cost and Benefit.

Ensure that the insurer, its producers or authorized representatives do not:

- Represent the policy as anything other than a life insurance policy;
- Use or describe non-guaranteed elements in a manner that is misleading.

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**STANDARDS  
MARKETING AND SALES**

**Standard 5**

**The insurer has suitability standards for its products, when required by applicable statutes, rules and regulations.**

**Apply to:** All life and annuity products

**Priority:** Essential

**Documents to be Reviewed**

\_\_\_\_\_ Applicable statutes, rules and regulations

\_\_\_\_\_ Producer records

\_\_\_\_\_ Training materials

\_\_\_\_\_ Procedure manuals

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Review whether the insurer has established a system of STOA-related oversight (underwriting criteria). If not, discuss the existence of the STOA bulletin with the insurer. The examiner should be mindful that the provisions within the bulletin may not be legally required by their jurisdiction.

Inquire if the company has detected any STOA transactions and if so, the examiner may want to determine if there were any suitability issues surrounding the sale of the STOA. If there were suitability issues, the examiner may want to inquire as to what actions were taken by the company to prevent further suitability issues and if the company took any action against the producer.

Note: Sales made in compliance with Financial Industry Regulatory Authority (FINRA) requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this regulation. Examiners should be mindful of the fact that both variable annuity sales and variable life sales are typically sold using FINRA requirements.

Examiners may wish to remind insurers that sell annuities of the existence of the *Stranger-*

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**STANDARDS  
MARKETING AND SALES**

**Standard 6**  
**Preneed funeral contracts or prearrangement disclosures and advertisements are in compliance with statutes, rules and regulations.**

**Apply to:** All preneed products

**Priority:** Essential

**Documents to be Reviewed**

\_\_\_\_\_ Applicable statutes, rules and regulations

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**STANDARDS  
MARKETING AND SALES**

**Standard 10**

**Insurer rules pertaining to suitability in annuity transactions are in compliance with applicable statutes, rules and regulations.**

**Apply to:** All annuity products

**Priority:** Essential

**Documents to be Reviewed**

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~~Monitor and determine that, 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, has made reasonable efforts to obtain the consumer's suitability information.~~

Examiners should be familiar with the term

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**STANDARDS****MARKETING AND SALES****Standard 16**

~~The insurer does 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.~~

The insurer issues annuities to consumers after determining 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 profile.

**Apply to:** All annuity sales and recommendations for products not otherwise excluded by the *Suitability in Annuity Transactions Regulation*

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Regulation (#275) have been adopted, review policy files to determine that the insurer is retaining required records for required time frames.

Examine insurer's procedures for verifying producer supervision and compliance with requirements on suitability. Producer supervision and compliance requirements are set forth in Supplemental Checklist M.

It is useful to become acquainted with the definitions and appendices set forth in the *Suitability in Annuity Transactions Model Regulation (#275)*.

~~The requirements set forth in Supplemental Checklist M do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this regulation.~~

~~The requirements 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. The requirements do not mean the annuity with the lowest one time or multiple occurrence compensation structures shall necessarily be recommended.~~

~~The requirements 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.~~

~~Nothing in the *Suitability in Annuity Transactions Model Regulation (#275)* 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.~~

Transactions not based on a recommendation (Editor's Note, the previous language "Transactions not based..." is a section heading in the *Suitability in Annuity Transactions Model Regulation (#275)* Section 6(B) and is underlined in this exam standard)

- 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:

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For variable life products with flexible premiums, ensure that a report is sent to the policyholder if the amounts available under the policy on any policy processing day to pay the charges authorized by the policy are less than the amount necessary to keep the policy in force until the next following processing day. The report should include the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment of the amount.

Ensure that at the time of processing policy loans, the insurer notifies policyholders of the initial rate of interest, maximum interest rates and the frequency at which rates may be adjusted. Such notice is to be provided within a reasonable time after processing premium loans.

Ensure the insurer sends advance notice to policyholders with loans, advising of any increases in loan rates.

For annuity contracts that provide cash surrender benefits, review the benefit provided to ensure it meets the requirements of statutes, rules and regulations. In no event shall any cash value benefit be less than the minimum nonforfeiture amount. The death benefit shall be at least equal to the cash surrender benefit.

For annuity contracts that do not provide cash surrender benefits, review the benefit provided to ensure it meets the requirements of statutes, rules and regulations. In no event shall the present value of a paid-up annuity be less than the minimum nonforfeiture amount.

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**STANDARDS  
POLICYHOLDER SERVICE**

**Standard 3**

**The regulated entity provides each policyowner with an annual report of policy values in accordance with statutes, rules and regulations and, upon request, an in force illustration or contract policy summary.**

**Apply to:** All life and annuity products

**Priority:** Essential

**Documents to be Reviewed**

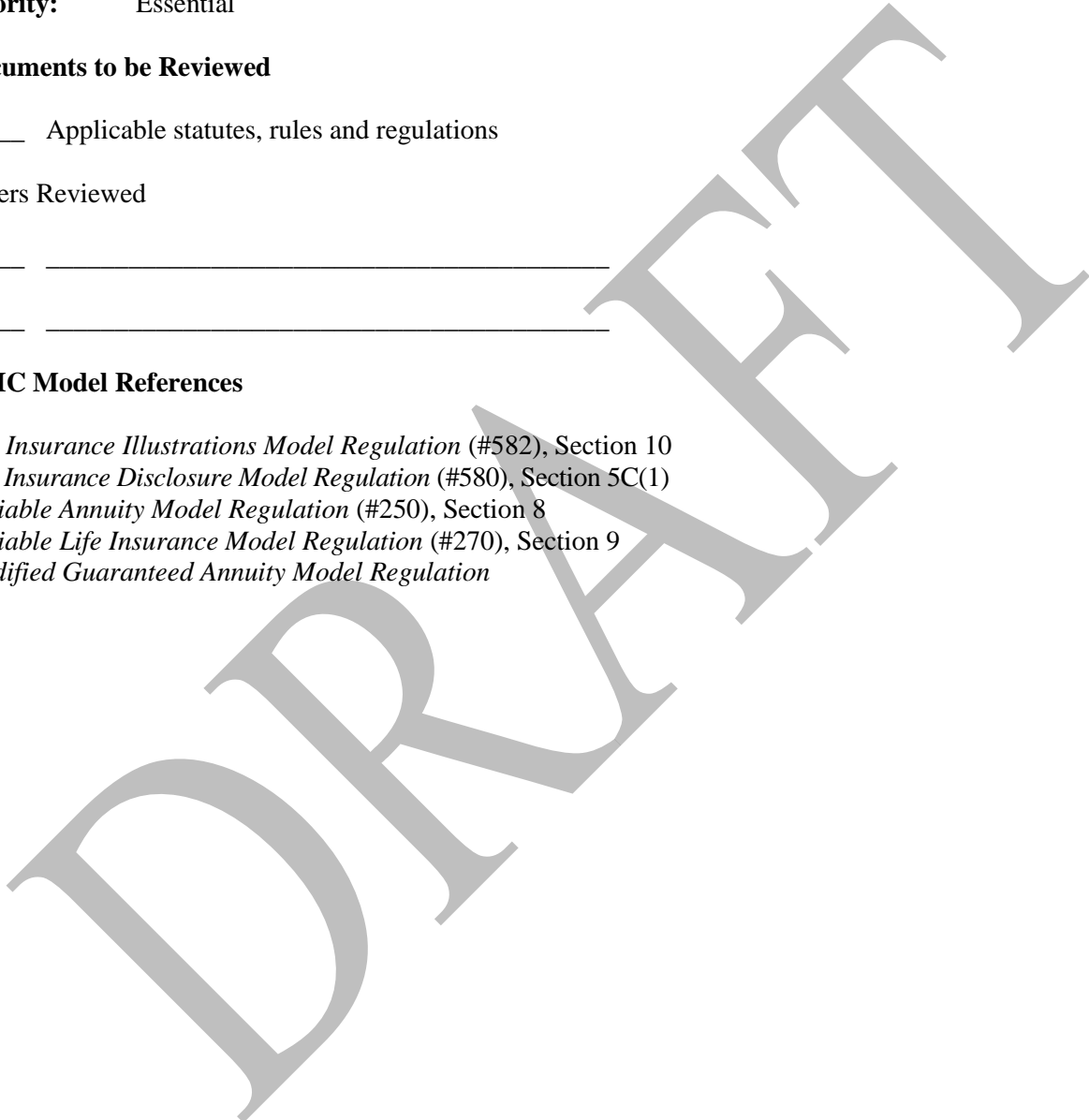
\_\_\_\_\_ Applicable statutes, rules and regulations

Others Reviewed

\_\_\_\_\_  
\_\_\_\_\_

**NAIC Model References**

- Life Insurance Illustrations Model Regulation (#582), Section 10*
- Life Insurance Disclosure Model Regulation (#580), Section 5C(1)*
- Variable Annuity Model Regulation (#250), Section 8*
- Variable Life Insurance Model Regulation (#270), Section 9*
- Modified Guaranteed Annuity Model Regulation*







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## **I. Supplemental Checklist for Marketing and Sales Standard #4 (cont'd)**

Determine whether, in addition to all other illustration requirements, indexed universal

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