*Adopted by the Life Insurance and Annuities (A) Committee, July 19, 2021*
*Adopted by the Annuity Suitability (A) Working Group, May 10, 2021*

# *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.

For purposes of this FAQ document, references to ñrevised modelò refer to the 2020 version of Model #275.

**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 [illegible] fiduciary rule, which was finalized in April 2016 but vacated in its enti[illegible] have expanded the scope of who is considered a fiduciar[illegible] 1974 (ERISA) retirement plans and individual retir[illegible] agents, insurance brokers and insurers. Separatel[illegible]and Exchange Commission (SEC[illegible] a proposed rule package in May 2018, which i[illegible] Best Interest (Reg BI). The SEC finalized [illegible] BI in June 2019. The final Reg BI establish[illegible] standard of conduct for broker-dealers beyond th[illegible] existing suitability obligation that applies to[illegible]ered variable annuities. Recognizing the SECôs and the DOLôs role in the regulatory landscape [illegible]hat consumers are better protected when, to the extent possible, there is compatibility with the r[illegible]rced by the states, the SEC and the DOL, the NAIC revised the model to establish a framework fo[illegible] standard of conduct that is more than the modelôs current suitability standard but not a fiduciary [illegible]

**Q2. How does the Harkin amen[illegible]n 989J of the Dodd-Frank Act apply to the revised model?**

A2. Section 989J confirms state a[illegible]gulate the sale of fixed and fixed indexed annuities and provides an exemption for such annuities from[illegible]ities regulation when certain conditions are met, including when the state in which the contr 0a12 .04[illegible]00912 0 612 792 reW*nBT/F3 11.04 Tf1 0 0 1 520.32 254.09 Tp2*nBT/F3 1



Section 989J

ñSection 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (ñDodd-Frank Actò) specifically refers to this model regulation as the ñSuitability in Annuity Transactions Model Regulation.ò 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.ò

As such, states need to work toward adopting the 2020 version within 5 years after its adoption by the full NAIC membership in February 2020, which, in this case, would require state adoption of the 2020 version by February 2025, to maintain the status of fixed and fixed indexed annuities meeting the requirements of Section 989J as outside the scope of federal securities regulation.

## EXEMPTIONS

**Q3.**
**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 version 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, or other mass communication media that does not involve a communication directed to a specific individual.

## 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 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 consumerôs financial situation, insurance needs and financial objectives;

Understand the available recommendation options;

Have a reasonable basis to believe the recommended option effectively addresses the consumerôs 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.

A6. Yes, the standard can apply, if 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. 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.

## CARE OBLIGATION

**Q7.**

**Q11. 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)?**

A11. The revised model defines material conflict of interest as ña financial interest of the producer in the sale of

A14. As the provision 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. For example, this provision would apply where a producer's eligibility for a particular bonus is tied to his or her sales of a particular annuity product during a particular month. However, 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 the sale of specific annuities within a limited period of time. Section 6C(2)(h) reflects the efforts for these revisions to be compatible with other financial service rule updates, such as the recent prohibition on most sales contests, quotas and bonuses tied to the sales of particular offerings that the SEC and FINRA have implemented. See Reg. BI and FINRA Rules, including Rules 2111, 2320, 2341 and 5110.

**<u>PRODUCER TRAINING</u>**

**Q15. Are there new producer training obligations under the revised model?**

A15. Yes, all producers must complete a one-time training course that covers general annuity principles – including the types and uses of annuities, how annuity contract features affect consumers, and tax implications – as well as information about the new standard of conduct and the other requirements of the revised model. The specific training required depends on what prior training the producer has completed.

**Q16. How can a producer satisfy the training requirements in the revised model?**

A16. A producer who has completed the annuity training requirements under the prior version of the movise [illegible]

**Q20. Can a producer requalify to recommend and sell annuities after failing to satisfy the training requirements of the revised model within the six-month grace period?**

A20. Yes, a producer who has completed the training required under the prior version of the model can requalify to recommend and sell annuities by completing the new four-credit training course prior to recommending or selling annuities.

**Q21. If a producer already completed the new training in another state, will they have to retake the training in every state where they may recommend or sell annuities?**

A21. No, completion of substantially similar training in one state satisfies the training requirement in other states.
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