



time of the transaction are appropriately addressed. The provisions of the S

**Potential Areas of Consistency with Proposed Changes**

**Suitability Rules**

We understand that FINRA's suitability r

have also considered that consumers and state courts may be confused by the term to the point where they may confuse “best interest” with a “bona fide fiduciary” duty. The fiduciary duty is often explained to a lay person as a best interest standard, which can be circular and misleading. The Working Group discussed not wanting to give a consumer the false impression that a producer or insurer is acting solely in their best interest when that standard does not correspond with the transactional, sales relationship between the producer or insurer and the consumer. Further, several members of the Working Group do not wish to substitute an entirely new “fiduciary” concept into the text of the Suitability model that may lead to a wide variety of interpretations in the courts, when preserving “suitability” offers a very firm framework upon which to build.

In lieu of defining “best interest,” the Working Group is considering draft revisions that describe the requirements needed to achieve an enhanced suitability standard equivalent to a “regulatory best interest standard.” Specifically, the Working Group is considering adding language to the Suitability model that states, “any recommendation made to the particular consumer shall be made without placing the financial or other interests of the producer, or insurer where no producer is involved, ahead of the consumer’s interests as known from the consumer’s suitability information.”

#### Disclosures

The Working Group discussed a consumer’s expectation that producers and insurers would disclose certain conflicts of interest and other information, particularly as related to compensation. Currently, the draft revisions require producers and insurers to d

**Conclusion**

The current draft revisions to the NAIC's Suitability model reflect many of the same principles contained in the SEC's Regulation Best Interest. While our work is ongoing and any revisions are still subject to change, it is essential that the SEC and state insurance regulators continue a productive dialogue in order to find areas in which we can create compatibility, clarity, and efficiency through our respective regulatory developments and enforcement activities to provide robust consumer protection. We look forward to continuing our ongoing dialogue as we continue to consider this important but complex issue. Should you have any questions, do not hesitate to contact Ethan Sonnichsen, Managing Director of government relations, at [esonnichsen@naic.org](mailto:esonnichsen@naic.org), Mark Sagat, Assistant Director Financial Policy and Legislation, at [msagat@naic.org](mailto:msagat@naic.org) or Heather Eilers-Bowser, Financial Policy and Legislative Counsel, at [heilersbowser@naic.org](mailto:heilersbowser@naic.org), or (202) 471-3990.

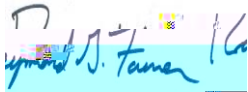
Sincerely,



NAIC President  
Commissioner



Eric A. Cioppa  
NAIC President-Elect  
Superintendent



The revisions to this draft reflect changes made from the existing model.

**SUITABILITY IN ANNUITY TRANSACTIONS  
MODEL REGULATION**

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**NOTE: WORKING GROUP HAS NOT DISCUSSED POTENTIAL REVISIONS TO SECTIONS 1-5 AND SECTIONS 7- 10.**

**Section 1. Purpose**

- A. The purpose of this regulation is to require insurers to establish 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 addressed.
- B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

**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.

**Section 2. Scope**

This regulation shall apply to any recommendation to purchase, exchange or replace 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 0 0 112( )-26(4j9(0 034(n)-4(alt)-11(y)17( ) ] TJETBT12( )4(

- (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;
- (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
- (5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- (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. "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].
- C. "Continuing education provider" or "CE provider" means an individual or entity that is

- (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.

**NOTE TO WORKING GROUP: BELOW ARE SUGGESTED ADDITIONAL DEFINITIONS FOR THE WORKING GROUP TO CONSIDER WHEN IT BEGINS DISCUSSION OF THIS SECTION BECAUSE THESE TERMS ARE USED IN THE PROPOSED REVISIONS TO SECTION 6.**

(ICWA): "Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, cash benefit, or other remuneration received by producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.

\*\*\*\*\*

(CEJ/CFA): "Consumer" means an applicant or an existing policyholder of a life insurance policy or annuity contract.

(NYS): "Consumer" means the owner or prospective owner of a policy.

\*\*\*\*\*

(CA): "Intermediary" means an entity



\*\*\*\*\*

(CA): "Non-cash compensation" means any form of compensation that is not cash compensation, including but not limited to, merchandise, gifts, tickets to paid events, prizes, travel expenses or meals and lodging.

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(IOWA): "Non-cash compensation" means any form of compensation received by the producer from an insurer or intermediary that is not cash compensation, but is variable or dependent on the volume of annuity sales production, including but not limited to, entertainment, merchandise, gifts and prizes, travel expenses or meals and lodging, and marketing or advertising expenses.

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(ACL): "Suitable" means a recommendation of an annuity that is consistent with the consumer's insurance needs and financial objectives based on the information set forth in the consumer profile information at the time of the recommendation.

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(IOWA): "Suitable" means in the furtherance of a consumer's objectives and needs under the circumstances then prevailing and based upon the facts disclosed by the consumer, or known at the time of the recommendation by the producer, or insurer where no producer is involved, as to the annuities, insurance, investment, and financial products the producer is authorized and licensed to recommend or sell, and as to the consumer's financial situation, objectives and needs, including the consumer's suitability information.

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(NYS): "Suitable" means in the furtherance of a consumer's needs and objectives under the circumstances then prevailing based upon the suitability information provided by the consumer and all products, services and transactions available to the producer.

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(JACKSON/AXA): <sup>3</sup>6SHFLILHG ILGXFLDU\` PHDQV DQ HQWLW\ DFWLQJ UHJLVWHUHG DQG UHJXODWHG XQGH a bank; (2) a trust company; or (3) an investment adviser under the Investment Advisers Act of 1940 or equivalent state law, and a person acting as an associated person of a specified fiduciary.

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

- A. (1) A producer, or an insurer where no producer is involved, shall not place the producer's or the insurer's financial interest above the consumer's interest when making a recommendation of an annuity product.
- (2) A producer or insurer complies with paragraph (1) by:
  - (a) Acting with reasonable diligence, care, skill and prudence;
  - (b) Making suitable recommendations in accordance with subsection B; and
  - (c) Making disclosures and acting in accordance with subsections C, D, E, F and H.

**NOTE TO THE WORKING GROUP: THE ALTERNATIVE LANGUAGE FOR SUBSECTION A ABOVE IS THE TENNESSEE SUGGESTED LANGUAGE AND WOULD REQUIRE RENUMBERING OF THE FOLLOWING SUBSECTIONS.**

- A. (1) 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 particular 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:~~
- (2) For purposes of this section, "reasonable grounds for believing that a recommendation is suitable" requires ~~fair dealing and reasonable competence, trustworthiness, diligence, care, skill and prudence by the producer, or the insurer where no producer is involved.~~
- (3) Any recommendation made to the particular consumer shall be made without placing the financial or other interests of the producer, or insurer where no producer is involved, ahead of the consumer's interests as known from the consumer's suitability information.
- (4) The requirements under this section do not mean the annuity product with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended, but the recommendation shall be ~~diligently focused on whether the product costs, rates, benefits, features and other contractual provisions of the annuity address the actual financial situation, objectives and needs of the particular consumer.~~

- (5) (a) The producer, or insurer where no producer is involved, shall consider all factors, including the consumer's suitability information, product costs rates, benefits, features and other contractual provisions.
- (b) The factors to be considered are those factors generally relevant in making a suitability determination, but the level of importance of each factor may vary depending on the facts and circumstances of a particular case. However, each factor shall not be considered in isolation.
- (6) To satisfy the requirements of this section, the producer, or insurer where no producer is involved, shall orally, or in writing, describe to the consumer the grounds for the recommendation and make a written record of the recommendation and the grounds for that recommendation.

**NOTE TO WORKING GROUP: THE LANGAUGE BELOW IN PROPOSED PARAGRAPH (7) WAS SUGGESTED BY THE INDUSTRY COALITION AND THE WORKING GROUP WANTED TO DISUSS FURTHER.**

- (7) *Nothing contained in this section shall be deemed to:*
  - (a) *Cause any producer or insurer to be treated as a fiduciary, or impose a duty of loyalty on any producer or insurer, under common law or any federal or state law or regulation;*
  - (b) 5HTXLUH D SURGXFH RU DQ LQVXUHU WR GHWHUPLQH  
3FKHDSHVW ` SURGXFW
  - (c) *Require or prohibit the use of any particular form or type of compensation or compensation arrangement, or any particular type of annuity distribution model (such as proprietary distribution or third party distribution);*
  - (d) *Require disclosure of, or impose any restrictions or prohibitions on, the health, retirement or other employee benefits to which a producer may be entitled; or*
  - (e) *Impose on a producer or an insurer any continuing obligation to the consumer after the recommended annuity is issued.*

**B. Prior to the recommendation of an annuity, a producer, or an insurer where no producer is involved, shall do all of the following:**

- (1) Make reasonable efforts to obtain suitability information from the consumer; and
- (2) Consider the types of products the producer, or insurer where no producer is involved, is authorized and licensed to recommend or sell that may align with the consumer's disclosed suitability information and address the consumer's financial situation, objectives and needs.

**C. Prior to or at the time of the recommendation of an annuity, the producer, or insurer where no producer is involved, shall prominently disclose to the consumer:**

- (1) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;
- (2) Disclose to the consumer any limitations the producer or the insurer has in regard to the following:
  - (a) The type of products that the producer is authorized and licensed to recommend or sell; and
  - (b) Whether only specific insurer company products or a limited range of annuity products may be offered;
- (3) (a) A description of the sources and types of 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 or fee.
- (b) To satisfy subparagraph (a) of this paragraph, the producer shall disclose:

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(c) A consumer refuses to provide relevant suitability 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)

- (2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). 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 contra



- (8) 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.
- (9) 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