

NOTE: This mark –up is not meant to be definitive. Rather, it is meant to be illustrative of some, but not all, of our points raised in our comment letter. It is subject to continuing analysis and development.

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 by Monday, Sept. 30, 2019.

SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

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Section 1. Purpose

- A. The purpose of this regulation is to require that producers abide by obligations regarding care, disclosure, conflict of interest, and documentation ~~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 so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed.
- B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

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Section 6. Duties of Insurers and Producers

- A. Best Interest Recommendation 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~~ is deemed to comply with this subsection by satisfying the following obligations regarding care, disclosure, conflict of interest and documentation:
 - (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) Not allow producer compensation or any material conflict of interest to affect the evaluation described in clause (iii) in forming the recommendation; and,~~
- (iv) Communicate a reasonable summary of 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.
- ~~(d) The requirement for a reasonable basis under subparagraph (a) (iii) of this paragraph does not necessarily mean a majority of all insurance and investment professionals could agree that the recommended option was the single best option, but only that it was reasonable for an ordinary producer in similar circumstances and with similar authority and license, to believe that the recommended annuity would effectively address the consumer's financial situation, insurance needs and financial objectives as evaluated in light of the consumer profile information.~~

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- (3) Conflict of interest obligation. A producer shall identify and ~~avoid or otherwise reasonably manage~~ prominently disclose to the consumer to the consumer material conflicts of interest, including material conflicts of interest related to an ownership interest.
- (4) Documentation obligation. A producer shall at the time of recommendation or sale:
 - (a) Make a written reasonable summary record of any recommendation and the basis for the recommendation subject to this regulation;

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C. Supervision system.

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- (4) Notwithstanding the foregoing, an insurer is not required to include in its system of supervision:
 - (a) a producer's recommendations to consumers of products other than the annuities offered by the insurer;
 - ~~(b) consideration of or comparison to products other than annuities offered by the insurer; and,~~
 - ~~(c) compensation relating to products recommended, considered, or compared other than annuities offered by the insurer. Nothing herein, however, shall override an insurer's obligations to comply with applicable replacement regulations.~~