

Model Bulletin¹
NAIC Suitability in Annuity Transactions Model Regulation

After receiving numerous inquiries from licensed insurance companies and producers regarding the provisions of [insert title and citation from state version of the NAIC Suitability in Annuity Transactions Model Regulation], this Bulletin has been issued to clarify the Department's expectations regarding key provisions of the [insert title and/or citation of state version of the NAIC Suitability in Annuity Transactions Model Regulation].

1. Section 6 B - Collection of Consumer Information.

Section 6 B of the Model Regulation requires an insurance producer, or an insurer where no producer is involved, to make reasonable efforts to obtain information concerning a consumer's financial status, tax status, investment objectives and other information used or considered to be reasonable in making a recommendation to the consumer. An insurance producer, or insurer where no producer is involved, making a recommendation to a consumer will be deemed to satisfy this requirement if it makes reasonable efforts to obtain the following information from the consumer. It is recognized that not all of the elements listed below will be applicable for every type of product recommended.

- age,
- annual income,
- financial situation and needs,
- investment or financial experience,
- investment or financial objectives,
- intended use of the annuity,
- investment or financial time horizon,
- existing assets (including investment and life insurance holdings),
- liquidity needs,
- liquid net worth,
- risk tolerance,
- tax status.

2. Section 6 A – Basis for Determining the Suitability of Recommendations.

The suitability analysis required under Section 6 A of the Model Regulation requires the insurance producer, or the insurer where no producer is involved, to have a reasonable basis for believing that the recommendation is suitable for the 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. An insurance producer, or insurer where no producer is involved, making a recommendation to a consumer will be deemed to satisfy this requirement if it has a reasonable basis to believe that the consumer:

- Has been informed, in general terms, of the various features of an annuity, such as a potential surrender period and surrender charge; potential tax penalty if the consumer sells or redeems the annuity before reaching the age of 59 1/2; fees and expenses; potential charges for and features of riders; the insurance and/or investment components of the annuity; and

¹ This Model Bulletin shall be adopted uniformly in all jurisdictions.

An insurance producer, or insurer where no producer is involved, shall satisfy the requirements set forth in this bullet point if it provides disclosure to a consumer that complies with the provisions of the NAIC Annuity Disclosure Model Regulation.

- Would benefit from certain features of the annuity such as tax-deferred growth; annuitization or a death benefit or living benefit.

3. Section 6 D. (1) – System of Supervision.

Section 6 D. (1) of the Model Regulation requires an insurer to establish and maintain a system of supervision including, but not limited to, maintaining written procedures and conducting periodic reviews of its records reasonably designed to achieve compliance with the Model Regulation. Sections 6 D. (3) and (4) allow an insurer to contract with a third-party to establish and maintain a system of supervision provided that the insurer makes reasonable inquiry to assure that the third party is performing the functions required under Section 6 D. (1) and takes such action as is reasonable under the circumstances to enforce the contractual obligation to perform those functions.

The system of supervision should be reasonably designed to reflect the unique combination of annuity product types and distribution systems to which it applies.

An insurer will be deemed to satisfy this requirement if the system of supervision established and maintained by the insurer or a third-party with whom the insurer has contracted under Section 6 D. (3) is designed to reasonably assure that:

- Producers conduct an appropriate suitability analysis prior to making a recommendation to a consumer.
- Producers have completed all insurance licensing and continuing education training as required by [citation to State's insurance licensing or continuing education requirement] before selling the insurer's annuity products. For purposes of Section 6 D. (3), an insurer or third party, as applicable, may rely on evidence that a producer's license is in good standing to determine that the producer has completed all required training.
- The insurer develops and makes available product-specific training materials or programs reasonably designed to enable producers who recommend the insurer's annuity product to understand the product's material features.
- The insurer or third-party, as applicable, analyzes sales and other data to identify patterns among recent annuity transactions that may be indicative of conduct inconsistent with the requirements of the Model Regulation, and makes reasonable inquiry, based upon such analysis, to determine whether appropriate corrective action may be warranted. Elements of this analysis may include, depending on the specific circumstances, the appropriate combination of the following:
 - Age of the applicants or annuitants;
 - Complaints;
 - Returns during the "free look" period;
 - Withdrawals;
 - Surrenders;
 - Replacements (both incoming and outgoing);
 - Regulatory sanctions; and

- Agent terminations.

4. Section 6 D. (4) - System of Monitoring – Periodic Reviews.

Section 6 D. (4) of the Model Regulation requires an insurer to make reasonable inquiry to assure that a third-party with whom the insurer has contracted to establish and maintain a system of supervision is performing its obligation according to the terms of the contract. An insurer may comply with its obligations to make reasonable inquiry by:

- Annually obtaining a certification from a manager at the third-party who has responsibility for the delegated functions to confirm that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and
- Conducting a periodic review of selected third parties based on reasonable selection criteria as a means to determine whether the third parties are performing the contractual obligations designed to comply with the requirements of Section 6 D. (1).

The insurer's system of monitoring should be reasonably designed to reflect the insurer's unique combination of annuity product types and distribution systems.

An insurer will be deemed to satisfy this requirement if the insurer establishes reasonable selection criteria to identify third-parties to be reviewed, and takes such appropriate corrective action that the insurer determines to be warranted based upon the findings of the periodic review. Reasonable selection criteria may include, but is not limited to:

- Analysis of sales data;
- Age of the applicants or annuitants;
- Product or share class;
- Optional riders;
- Complaints;
- "Red flag" programs (including telephonic or written surveys);
- Surrenders;
- Replacements (both incoming and outgoing);
- Regulatory sanctions; and
- Agent terminations.

5. FINRA Safe Harbor.

Nothing in this Bulletin shall limit the applicability of the "safe harbor" in Section 6 E. for compliance with Financial Industry Regulatory Authority (FINRA) Conduct Rules pertaining to suitability.