

## SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

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### 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 (IRC), as amended, if established or maintained by an employer;
- (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 approved to offer continuing education courses pursuant to [insert reference in State law or regulations governing producer continuing education course approval].
- D. “FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.
- E. “Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
- F. “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.
- G. “Recommendation” means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice.
- H. “Replacement” means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:
  - (1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;

- (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
- (3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
- (4) Reissued with any reduction in cash value; or
- (5) Used in a financed purchase.

**Drafting Note:** The definition of “replacement” above is derived from the NAIC Life Insurance and Annuities Replacement Model Regulation. If a State has a different definition for “replacement,” the State should either insert the text of that definition in place of the definition above or modify the definition above to provide a cross-reference to the definition of “replacement” that is in State law or regulation.

- I. “Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:
  - (1) Age;
  - (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.

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

- A. 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 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:

- (1) 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;

**Drafting Note:** If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.

- (2) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;
  - (3) 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
  - (4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:
    - (a) 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;
    - (b) The consumer would benefit from product enhancements and improvements; and
    - (c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.
- B. 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, shall make reasonable efforts to obtain the consumer's suitability information
- C. Except as permitted under subsection D, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.
- D. (1) Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection A or C related to any annuity transaction if:
- (a) No recommendation is made;
  - (b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

- (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) An insurer's issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.
- E. An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:
  - (1) Make a record of any recommendation subject to section 6A of this regulation;
  - (2) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and
  - (3) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.
- F. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this regulation, including, but not limited to, the following:
  - (a) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;
  - (b) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 7 of this regulation;
  - (c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;
  - (d) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

- (e) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and
    - (f) The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.
  - (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 contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.
    - (b) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:
      - (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
      - (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.
  - (3) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.
- G. An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:
  - (1) Truthfully responding to an insurer's request for confirmation of suitability information;
  - (2) Filing a complaint; or
  - (3) Cooperating with the investigation of a complaint.
- H. (1) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of annuities if the suitability and supervision is similar to those applied to

variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce (including investigate) the provisions of this regulation.

**Drafting Note:** Non-compliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation.

- (2) For paragraph (1) to apply, an insurer shall:
  - (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and
  - (b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

## **Section 7. Insurance Producer Training**

- A. An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.
- B.
  - (1)
    - (a) An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.
    - (b) Insurance producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.
  - (2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits, but may be longer.
  - (3) The training required under this subsection shall include information on the following topics:
    - (a) The types of annuities and various classifications of annuities;
    - (b) Identification of the parties to an annuity;
    - (c) How product specific annuity contract features affect consumers;
    - (d) The application of income taxation of qualified and non-qualified annuities;
    - (e) The primary uses of annuities; and

- (f) Appropriate sales practices, replacement and disclosure requirements.
- (4) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
- (5) A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this State and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in [insert reference to State law or regulations governing producer continuing education course approval].
- (6) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with [insert reference to State law or regulations governing producer continuing education course approval].
- (7) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with [insert reference to State law or regulations governing to producer continuing education course approval].
- (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 education providers.

## **Section 8. Compliance Mitigation; Penalties**

- A. An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may order:
  - (1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation;
  - (2) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation; and
  - (3) Appropriate penalties and sanctions.



- B. Any applicable penalty under [insert statutory citation] for a violation of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

**Drafting Note:** Subsection B above is intended to be consistent with the commissioner's discretionary authority to determine the appropriate penalty for a violation of this regulation. The language of subsection B is not intended to require that a commissioner impose a penalty on an insurer for a single violation of this regulation if the commissioner has determined that such a penalty is not appropriate.

**Drafting Note:** A State that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, "shall" should be substituted for "may" in the same sentence. States should consider inserting a reference to the NAIC Unfair Trade Practices Act or the State's statute that authorizes the commissioner to impose penalties and fines.

## **Section 9. [Optional] Recordkeeping**

- A. Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for [insert number] years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

**Drafting Note:** States should review their current record retention laws and specify a time period that is consistent with those laws. For some States this time period may be five (5) years.

- B. Records required to be maintained by this regulation may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

**Drafting Note:** This section may be unnecessary in States that have a comprehensive recordkeeping law or regulation.

## **Section 10. Effective Date**

The amendments to this regulation shall take effect six (6) months after the date the regulation is adopted or on [insert date], whichever is later.

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*Chronological Summary of Action (All references are to the Proceedings of the NAIC).*

*2003 Proc. 3<sup>rd</sup> Quarter 17-18, 24-27, 32, 213 (adopted).*

*2006 Proc. 2<sup>nd</sup> Quarter 40, 90 (amended).*

*2010 Proc. 1<sup>st</sup> Quarter Vol. I 105-106, 117, 129-139, 146-159, 313 (amended).*

*2015 Proc. 1<sup>st</sup> Quarter, Vol. I 117-118, 131-134, 326-335, 431 (amended).*

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**This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.**

**This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.**

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**KEY:**

**MODEL ADOPTION:** States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

**RELATED STATE ACTIVITY:** Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

**NO CURRENT ACTIVITY:** No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Alabama	ALA. ADMIN. CODE r. § 482-1-137 (2007/2016).	ALA. ADMIN. CODE r. § 482-1-146 (2009).
Alaska		ALASKA ADMIN. CODE tit. 3, §§ 26.770 to 26.789 (2008/2012) (portions of previous version of model); BULLETIN 2009-7 (2009).
American Samoa	NO CURRENT ACTIVITY	
Arizona	ARIZ. REV. STAT. ANN. §§ 20-1243.01 to 1243.06 (2006/2010) (Portions of Model).	
Arkansas		054.00.82 ARK. CODE R. § 1 to 10 (2004/2009) (previous version of model); Directive 2-2006; BULLETIN 11-2009 (2009); BULLETIN 5-2010 (2010).
California		CAL. INS. CODE § 10509.910 to 918 (1990/2011) (previous version of model); Letter Oct. 5, 2005.

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Colorado		3 COLO. CODE REGS. § 4-1-11 (2004/2011) (previous version of model).
Connecticut		CONN. AGENCIES REGS. §§ 38a.432A-1 to 38a.432A-8 (2005/2012) (previous version of model); BULLETIN L-18 (2012).
Delaware		18 DEL. CODE REGS. § 1214 (2006) (previous version of model; limited to seniors).
District of Columbia		D.C. MUN. REGS. tit. 26A, § 8400 to 8499 (2010/2011) (previous version of model).
Florida		FLA. STAT. § 627.4554 (2004/2013) (portions of previous version of model); FLA. ADMIN. CODE ANN. R. 69B-162.011 (2009/2014).
Georgia	GA. COMP. R. & REGS. 120-2-94-.01 to 120-2-94-.10 (2006/2015).	
Guam	NO CURRENT ACTIVITY	
Hawaii		HAW. REV. STAT. §§ 431:10D-621 to 431:10D-625 (2008/2011) (previous version of model); Memorandum 2011-2 (2011).
Idaho		IDAHO ADMIN. CODE r. 18.01.09.001 to 18.01.09.021 (2005/2013) (previous version of model); IDAHO CODE ANN. § 41-1940 (2005/2008) (portions of previous version of model and authority to adopt regulation).
Illinois		ILL. ADMIN. CODE tit. 50, §§ 3120.10 to 3120.80 (2007/2011) (previous version of model); BULLETIN 2011-13 (2011).

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Indiana		760 IND. ADMIN. CODE 1-72-1 to 1-72-6 (2006/2011) (previous version of model); IND. CODE §§ 27-4-9-1 to 27-4-9-6 (2005/2007) (portions of previous version of model; limited to seniors); § 27-1-15.6-19.5 (2011).
Iowa		IOWA ADMIN. CODE r. 191-15.72 to 191.15.78 (2006/2012) (previous version of model); IOWA ADMIN. CODE r. 191-15.8 (life and annuity sales guidelines); 191-33.3 (1984/1999) (variable life); BULLETIN 2007-5 (2007); BULLETIN 2009-4 (2009).
Kansas		KAN. ADMIN. REGS. § 40-2-14a; (Policy & Procedure Regarding Annuity Transactions), Nov. 29, 2012.
Kentucky		806 KY. ADMIN. REGS. 12:120 (2007/2012) (previous version of model); 806 KY. ADMIN. REGS. 9:220 (2011).
Louisiana		LA. ADMIN. CODE §§ 37:11701 to 37:11717 (2006) (previous version of model).
Maine		917 ME. CODE R. § 02-031 (2007/2015) (previous version of model); ME. REV. STAT. ANN. tit. 24-A, § 2517 (1969/2005) (authority to adopt regulation).
Maryland		MD. CODE REGS. §§ 31.09.12.01 to 31.09.12.09 (2007/2011) (previous version of model); BULLETIN 2011-28 (2011).

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Massachusetts		211 MASS CODE REGS. 96.01 to 96.10 (2016) (previous version of model).
Michigan		MICH. ADMIN. CODE r. 500.4151 to 500.4165 (2006/2013) (previous version of model).
Minnesota		MINN. STAT. ANN. §§ 60K.46 to 60K.56 (2012) (portions of model); §§ 72A.20 to 72A.2036 (2012/2013) (portions of previous version of model); MINN. STAT. § 61A.021 (tying prohibited).
Mississippi		19-2 MISS. CODE R. §§ 18.01 to 18.11 (2013) (previous version of model); BULLETIN 2014-7 (2014).
Missouri	MO. CODE REGS. ANN. tit. 20, § 400-5.900 (2017).	MO. REV. STAT. § 376.671 (2010); MO. CODE REGS. ANN. tit. 20, § 400-1.020 (1984/2002); § 700-1.146 (2005/2008).
Montana	MONT. CODE ANN. §§ 33-20-141, 33-20-802 to 33-20-806 (Effective Jan. 1, 2018).	
Nebraska		NEB. REV. STAT. §§ 44-8101 to 44-8109 (2006/2012) (previous version of model); BULLETIN CB-128 (2012).
Nevada		NEV. ADMIN. CODE §§ 688A.400 to 688A.475 (2005) (previous version of model); BULLETIN 2006-004 (2006).
New Hampshire		N.H. CODE ADMIN. R. ANN. INS. 305.01 to 305.08 (2009/2014) (previous version of model); BULLETIN 14-036-AB (2014).



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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
New Jersey		N.J. ADMIN. CODE §§ 11:4-59A.1 to 11:4-59A.6 (2013) (previous version of model); N.J. STAT. ANN. § 17B:25-20 (1981/2005) (limits maturity dates and surrender charges for annuities sold to seniors); §§ 17B:25-34 to 17B:25-42 (2008); BULLETIN 2009-12 (2009).
New Mexico	NO CURRENT ACTIVITY	
New York		N.Y. COMP. CODES R. & REGS. tit. 11, §§ 224.0 to 224.7 (2011/2013) (previous version of model); N.Y. COMP. CODES R. & REGS. tit. 11, §§ 225.0 to 225.3 (2013) (senior-specific certifications).
North Carolina		N.C. GEN. STAT. §§ 58-60-150 to 58-60-180 (2007) (previous version of model); 11 N.C. ADMIN. CODE 12.0420 (1976/1992) (submit suitability form).
North Dakota		N.D. CENT. CODE §§ 26.1-34.2-01 to 26.1-34.2-05 (2007/2011) (previous version of model); N.D. ADMIN. CODE §§ 45-02-02-14 (recommendations to consumers over age 65); § 45-04-04-07 (1984).
Northern Marianas	NO CURRENT ACTIVITY	
Ohio		OHIO ADMIN. CODE 3901:6-13 (2010) (previous version of model).
Oklahoma		OKLA. ADMIN. CODE §§ 365:25-17-1 to 365:25-17-11 (2005/2007); BULLETIN 1-12-2012 (2012).
Oregon		OR. ADMIN. R. 836-080-0170 to 836-080-0193 (2011) (previous version of model).

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Pennsylvania		40 PA. CONS. STAT. §§ 627-1 to 627-7 (2010).
Puerto Rico	NO CURRENT ACTIVITY	
Rhode Island		11-5 R.I. CODE R. §§ 1 to 11 (2011)(previous version of model); BULLETIN 2011-2 (2011).
South Carolina		S.C. CODE ANN. REGS. 69-29 (2011) (previous version of model).
South Dakota		S.D. CODIFIED LAWS. §§ 58-33A-13 to 58-33A-27 (2008/2012) (previous version of model); S.D. ADMIN. R. § 58-28-33 (2003); BULLETIN 2008-5 (2008).
Tennessee	TENN. COMP. R. & REGS. §§ 0780-1-86-.01 to 0780-1-86-.09 (2015).	BULLETIN 5-22-2013.
Texas		TEX. INS. CODE ANN. §§ 1115.001 to 1115.102 (2007/2011) (previous version of model).
Utah		UTAH ADMIN. CODE r. 590-230-1 to 590-230-10 (2004/2012) (previous version of model).
Vermont	NO CURRENT ACTIVITY	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	14 VA. ADMIN. CODE §§ 5-45-10 to 5-45-50 (2017).	

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Washington		WASH. ADMIN. CODE § 284-17-265 (2012) (portions of model); § 284-23-390 (2012) (previous version of model); WASH. REV. CODE § 48.23 (2009) (previous version of model).
West Virginia		W. VA. CODE R. §§ 114-11B-1 to 114-11B-7 (2008/2011) (previous version of model).
Wisconsin	WIS. STAT. § 628.347 (2004/2015).	
Wyoming		64 WYO. CODE REGS. §§ 1 to 10 (2014) (previous version of model); 7 WYO. CODE REGS. § 11 (1996) (variable contract regulation).

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## SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

### Proceedings Citations

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In 2000, the NAIC adopted a white paper recommending the establishment of suitability standards for life insurance and annuities. Shortly thereafter a working group was appointed to draft standards. The purpose of the model act and regulation developed by that working group was to regulate the activities of insurers and producers who made recommendations to consumers to purchase certain life insurance and annuity products to ensure that insurers and producers made suitable recommendations based on relevant information obtained from the persons who purchased life insurance and annuity products. **2003 Proc. 3<sup>rd</sup> Quarter 27.**

A model act and regulation were adopted by the working group and forwarded to the parent committee. Because of the lack of support for a wide-reaching suitability standard, and because none had existed before in most states, the parent committee recommended a narrow model that addressed the area of most concern to regulators—the sale of annuities to seniors. A new model was drafted in early 2003 and comments solicited. Associations, consumer groups and others participated. The process resulted in a new model that was adopted by the NAIC membership. **2003 Proc. 3<sup>rd</sup> Quarter 28.**

A commissioner proposed amending the Life Insurance and Annuities (A) Committee charges to include reviewing and changing the Senior Protection in Annuity Transactions Model Regulation to address the suitability issue with regards to all annuity transactions. **2006 Proc. 1<sup>st</sup> Quarter 38.**

The Life Insurance and Annuities (A) Committee adopted revisions to this model. A commissioner stated that he had urged reopening the Senior Protection in Annuity Transactions Model Regulation to expand the model's suitability protections to consumers of all ages, not just those 65 years of age or older. Since the model's adoption in 2003, there was an increasing number of complaints from those under 65. Committee members expressed support for the proposed revisions particularly in light of proposed legislation being considered by the California Legislature, Senate Bill 192. **2006 Proc. 1<sup>st</sup> Quarter 322.**

The joint Executive Committee/Plenary adopted the proposed revisions to the Senior Protection in Annuity Transactions Model Regulation. The revisions expand the model's protections to all consumers, not just those 65 years of age or older. Since the model's adoption in 2003, there had been an increasing number of complaints from those under 65. **2006 Proc. 2<sup>nd</sup> Quarter 39.**

The Suitability of Annuity Sales Working Group discussed the guidelines that they believed should be part of the revisions. **2008 Proc. 3<sup>rd</sup> Quarter 6-49 to 6-51.**

The Working Group discussed a draft of the proposed revisions to the model. Regulators discussed how California had not adopted the current model because of its concerns with its delegation and other provisions. The Working Group discussed priorities for revising the model and held a panel discussion on the proposed revisions. **2008 Proc. 4<sup>th</sup> Quarter 6-9 to 6-11.**

The Life Insurance and Annuities (A) Committee discussed options as whether to amend the existing Suitability in Annuity Transactions Model Regulation. **2009 Proc. 2<sup>nd</sup> Quarter 6-4.**

The Working Group discussed several issues related to revising the scope of this model as well as issues that needed to be addressed. **2009 Proc. 2<sup>nd</sup> Quarter 6-29 to 6-30.**

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The Life Insurance and Annuities (A) Committee decided to affirmatively pursue revising the model regulation rather than continuing to discuss the issue of developing a model bulletin. **2009 Proc. 3<sup>rd</sup> Quarter 6-4.**

The Suitability of Annuity Sales (A) Working Group adopted a draft of revisions to the Suitability in Annuity Transactions Model Regulation. **2009 Proc. 4<sup>th</sup> Quarter 6-3.**

The Life Insurance and Annuities (A) Committee adopted the revisions to the Suitability in Annuity Transactions Model Regulation. When voting, one state reserved its right to amend the model if it was presented for adoption as a regulation or law. **2010 Proc. Spring 6-4 to 6-6.**

The joint Executive Committee/Plenary adopted proposed revisions to the Suitability in Annuity Transactions Model Regulation. These revisions made three core changes to the model: (1) clarified that the insurer is responsible for compliance with the model's requirements even if the insurer contracts with a third party; (2) required a review of all recommended annuity transactions; and (3) established producer general training and specific-product training requirements. **2010 Proc. Spring 3-3.**

**Section 1. Purpose**

A. There was some consensus to prepare a draft that started with the National Association of Securities Dealers (NASD) standards in place for variable products. An interested party said the primary issue was whether incorporation of the NASD standards meant that regulators were also incorporating the whole supervisory structure of the NASD. **2003 Proc. 2<sup>nd</sup> Quarter 220.**

A regulator said the earlier draft prepared by the working group had a checklist of specific items to be reviewed but now that the standard was more general, he suggested removing the word "minimum" before standards so that the regulation would just say that it set forth standards and procedures. An interested party said that the wording of Section 1 could imply that insurers did not have a responsibility if they did not make recommendations and the committee agreed to reword that section to make this clearer. **2003 Proc. 2<sup>nd</sup> Quarter 217.**

To address continuing concerns on the part of interested parties that suitability might be determined based on later circumstances, the committee added the phrase "at the time of the transaction" to Subsection A. **2003 Proc. 2<sup>nd</sup> Quarter 220.**

B. An interested party asked the committee to consider adding specific language in Section 1 about a private cause of action. Regulators agreed to add a Subsection B referring to a private cause of action. Another regulator said this already appeared in the Unfair Trade Practices Act and so it was not needed in this regulation. The committee agreed to repeat the language as it was written in the Unfair Trade Practices Act in this document. The regulator suggested adding a drafting note that if a state had different language in its Unfair Trade Practices Act, it should use that instead. **2003 Proc. 2<sup>nd</sup> Quarter 217.**

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#### Section 2. Scope

Extensive discussion took place on whether the model should cover all recommendations or just recommendations that resulted in a sale. Ultimately the drafters settled on a focus on recommendations that resulted in sales. They expressed concern that all recommendations be suitable, but recognized the record-keeping burden that would be imposed by extending the model to cover all recommendations. **2003 Proc. 3<sup>rd</sup> Quarter 28.**

An interested party said the draft was so general in scope that it was confusing. The interested party said that the phrase, “transaction or a series of transactions” was too broad. If a producer who was not licensed with Company A recommended that an individual surrender his annuity and buy a Company B product, Company A had no ability to judge the suitability of that recommendation. A commissioner said that, if a person exchanged an annuity for a universal life insurance policy, the language recommended by the interested party would be clearer. Another interested party asked if this would cover a situation when a person surrendered his annuity and bought a mutual fund. The interested party said that, in that case, neither the securities nor insurance regulators would have jurisdiction when someone surrendered an annuity. **2003 Proc. 3<sup>rd</sup> Quarter 212.**

Once the model was narrowed to apply only to sales of annuities to seniors, one new issue was whether the rules should apply to all transactions involving an annuity, or just a transaction where an annuity was being purchased. The language settled on referred to a purchase or exchange of an annuity. **2003 Proc. 3<sup>rd</sup> Quarter 28-29.**

A commissioner distributed a draft of proposed revisions to the Senior Protection in Annuity Transactions Model Regulation. The Life Insurance and Annuities (A) Committee voted to expose the draft for comment. The Committee intended to expedite consideration of these revisions. **2006 Proc. 1<sup>st</sup> Quarter 324.**

#### Section 3. Authority

There were many controversial items raised during the drafting of the initial model draft. The working group discussed whether to use the Unfair Trade Practices Act as authority for development of a regulation. Interested parties urged the working group to develop language specific to suitability of sales. This discussion also extended to whether to require a pattern of conduct, as in the Unfair Trade Practices Act, or whether a single violation was sufficient to invoke penalties. **2003 Proc. 3<sup>rd</sup> Quarter 28.**

#### Section 4. Exemptions

Once the model was narrowed to apply only to sales of annuities to seniors, many of the issues that previously had been controversial no longer applied, such as many of the exemptions included in the earlier draft. However one new issue was whether the rules should apply to all transactions involving an annuity, or just a transaction where an annuity was being purchased. The language settled on referred to a purchase or exchange of an annuity. **2003 Proc. 3<sup>rd</sup> Quarter 28-29.**

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**Section 4 (cont.)**

The Working Group deleted the exemptions that were in this Section. **2008 Proc. 3<sup>rd</sup> Quarter 6-6.**

A. An interested party suggested a number of technical changes to the draft. One suggestion was to add “pursuant to this regulation” following “based on information collected from the senior consumer” in Section 4A. A regulator said that if the producer used information he already knew, it would fall outside the scope of the regulation and that was not the drafters’ intent. The interested party responded that the purpose of that language was to reflect the fact that the type of information gathered from the consumer should be relevant to determining suitability in order to fall under this regulation. Regulators decided to include the language suggested by the interested party in Section 4A. **2003 Proc. 3<sup>rd</sup> Quarter 213.**

The drafting group discussed how the regulation would apply to direct writers. An interested party said that a recommendation should be based on an exchange of information. Direct writers sent out information with minimal knowledge of the person receiving it. If the model applied to them, direct writers will have to change the way they did business. A regulator opined that in direct response solicitations, the advertising just described the product; it does not “advise.” Another interested party said the earlier draft prepared by the working group exempted direct response if no direct recommendation was made. An interested party said all advertising could be a recommendation. That is why the words “specific personalized” needed to be in the draft referring to recommendations. **2003 Proc. 2<sup>nd</sup> Quarter 217.**

The Suitability of Annuity Sales (A) Working Group discussed deleting the words “by insurer.” **2009 Proc. 4<sup>th</sup> Quarter 6-7.**

The Working Group added the word “insurer” in response to discussions with the Securities and Exchange Commission (SEC) to clarify what type of direct response solicitation would be exempt from the model’s provisions. **2009 Proc. 4<sup>th</sup> Quarter 6-10.**

B. The committee decided to put exemptions in this regulation similar to those that had been in the draft act considered by the earlier working group. A regulator pointed out that the draft included an exemption for variable annuities, which should be removed. The committee discussed the various types of contracts included in Subsection B and decided that they were all appropriate exemptions. A regulator asked why prepaid funeral contracts were being excluded. Another regulator responded that these were smaller face amount products, not generally in the area of abuses. The drafters considered adding an exemption for structured settlements. A regulator pointed out that this type of contract did not generally result from a recommendation by an insurer or producer but agreed that it did not hurt to have the exemption there. Another interested party requested that the committee consider an exemption for sophisticated purchasers. An interested party said the National Association of Securities Dealers (NASD) suitability standards did not have an exemption for sophisticated purchasers, for good reason. The committee declined to add it to this draft. **2003 Proc. 2<sup>nd</sup> Quarter 219.**



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**Section 4 (cont.)**

A regulator expressed concern about deleting the language concerning the exemption for ERISA plans. Another regulator said that the basis for developing the revisions to the model was due to problems some states had experienced with unsuitable sales involving annuities sold on an individual basis, not on a group basis to employer groups. **2009 Proc. 4<sup>th</sup> Quarter 6-8 to 6-11.**

**Section 5. Definitions**

An interested party pointed out that the earlier draft from the working group included a definition of “suitable.” He asked if that should be added here. A regulator said using the standards from the NASD addressed that issue. **2003 Proc. 2<sup>nd</sup> Quarter 219.**

The Working Group added new definitions for “continuing education credit” and “continuing education provider because these terms were used in Section 7. The Group deleted the definition of “qualified staff.” **2009 Proc. 4<sup>th</sup> Quarter 6-10.**

B. An interested party asked whether the reference in Section 5B should be “rebuttable presumption” instead of “reasonable presumption.” **2008 Proc. 3<sup>rd</sup> Quarter 6-7.**

D. A commissioner said he would like to finish the recommendation definition so that the wording for Section 1 could be clearer. An interested party suggested inserting the word “specific personalized” before recommendations. The commissioner said he was not in favor of the suggestion to add “specific personalized” to recommendations to relieve direct writers from any obligation. A regulator said that “personalized” could mean that, as long as the individual’s name is not on any advice, it is not personalized. This created a loophole. Another regulator said this suggestion had been brought up to the former working group over and over again and was always rejected. An interested party said that a recommendation should be based on an exchange of information. Otherwise the model was too broad. **2003 Proc. 2<sup>nd</sup> Quarter 217.**

The committee spent a considerable amount of time discussing the definition of recommendation in Subsection D. Several interested parties suggested adding language to the definition of recommendation to clarify that it applied only to recommendations that resulted in a sale. A regulator asked if the NASD rules applied to all recommendations. An interested party responded that in theory they did, but in practical terms, only recommendations that resulted in a sale were acted upon because those were the transactions that caused harm. A regulator pointed out that the rule keeping requirements applied only to recommendations that resulted in a sale. **2003 Proc. 2<sup>nd</sup> Quarter 219.**

A commissioner asked how the NASD defined recommendations. An interested party said that the NASD did not have a legal definition but gave guidance to members on various issues related to their recommendations. A regulator asked if that created any problems and the interested party responded that it gave the NASD flexibility to look at the circumstances. The regulator asked if a specific definition such as contained in the NAIC’s model might cause a problem with variable products. The interested party said that was a possibility. **2003 Proc. 2<sup>nd</sup> Quarter 216.**

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**Section 5 (cont.)**

A regulator asked how this regulation would operate if a recommendation were made in a group situation. A commissioner said that, before any transaction took place, members of the group would have to sit down individually with the producer to complete an application. The regulator said that it might be difficult for regulators to decide if a seminar or education program was really a recommendation. The commissioner said the producer would not be relieved of his duty to get an application and information from each person who decided to purchase the product. An interested party suggested that it might be wiser to follow the lead of the NASD and not define a recommendation. Another interested party suggested including the word “individual” to avoid the question of whether advertising was a recommendation. A regulator asked if the NASD considered a group presentation to be a recommendation. An interested party responded that an analysis would be done on a case-by-case basis. Another interested party said that, after a general sales presentation to a group, an individual recommendation must be made as to a specific product and amount. A regulator said that a recommendation would not take place until that point. An interested party said adding the NASD rules addressed many of the concerns about these types of situations. **2003 Proc. 2<sup>nd</sup> Quarter 219.**

An interested party expressed concern with this Section. A commissioner suggested that language from the North American Securities Administrators Association (NASAA) rule be added specifically stating that the proposed model’s provisions do not limit the commissioner’s authority to enforce existing provisions of law. **2008 Proc. 3<sup>rd</sup> Quarter 6-7.**

An interested party urged the Life Insurance and Annuities (A) Committee to delete Section 5D. After discussion, the Committee requested additional information from the interested party. **2008 Proc. 3<sup>rd</sup> Quarter 6-15 to 6-16.**

E. An industry trade association suggested raising the age when someone was a “senior consumer” to 75. A regulator said that, with people moving toward early retirement, the age should be 55. If the committee wanted to consider an adjustment, he would argue for a lower age. Another regulator said 65 was a compromise already. The scope was narrowed from covering all transactions. **2003 Proc. 2<sup>nd</sup> Quarter 217.**

A regulator asked whether the definition of “qualified staff” would be revised. **2009 Proc. 3<sup>rd</sup> Quarter 6-90.**

H. The Working Group added a new definition for “replacement.” The definition was derived from the definition of “replacement” in the Life Insurance and Annuities Replacement Model Regulation. **2009 Proc. 4<sup>th</sup> Quarter 6-7.**

The Working Group revised the definition of “suitability information” to more appropriately reflect that buying an annuity is a financial planning decision, not necessarily an investment decision. **2009 Proc. 4<sup>th</sup> Quarter 6-10.**

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

While the model was being drafted, one of the most controversial issues was balancing the responsibilities of the insurers and the producers. The working group that first drafted a model was convinced that the proper balance was to require responsibility for both. The working group draft required the insurer to have standards for suitable recommendations in place and a system designed to make sure that producers knew and followed those standards. The producer had a responsibility to follow the standards set by the insurer. One significant addition to the draft prepared by the parent committee was to add standards for mitigation of penalties if the producer and insurer worked to right any wrongs done to a consumer. **2003 Proc. 3<sup>rd</sup> Quarter 28.**

An interested party opined that one of the fundamental issues was the duties of insurers and producers. A commissioner asked what would happen if a recommendation was made and then six months later the individual decided to make the purchase. An interested party said the presumption in the draft was that, if the purchase was the result of the recommendation, the responsibility to determine suitability would still be there. The commissioner said that seemed to him to be a good approach. The interested party said the case-by-case analysis of the NASD was an appropriate approach. Another commissioner agreed that regulators should allow themselves the latitude to consider suitability issues on a case-by-case basis without specific detail. **2003 Proc. 2<sup>nd</sup> Quarter 217.**

B. The committee agreed to insert “resulting from a recommendation” following “transaction” in subsection B. **2003 Proc. 3<sup>rd</sup> Quarter, 213.**

C. A regulator criticized the draft by saying that if a customer refused to provide information, the entire model was not applicable to that transaction. He suggested adding a new Paragraph (2) so that the insurer or producer was still charged with responsibility. If it was clear that the producer should have not gone forward, it was still not an appropriate sale. **2003 Proc. 2<sup>nd</sup> Quarter 152.**

The Working Group discussed whether the model should prohibit an insurer from issuing an annuity recommended to a consumer unless the annuity is suitable for the consumer based on the information provided at the time of sale. After discussion, the Group decided to revise this section. **2009 Proc. 1<sup>st</sup> Quarter 6-32.**

A regulator suggested revising the language related to penalties to pattern the language used in the Unfair Trade Practices Act. Another regulator suggested that the Working Group not make a decision on this recommendation, but add it to a list of recommendations for additional discussion at a later date. **2009 Proc. 3<sup>rd</sup> Quarter 6-89.**

The Working Group clarified this section to illustrate that an insurer is responsible for the suitable sale of its products and is responsible for ensuring that the model’s requirements are followed by its producers and any third-party contractors. **2009 Proc. 4<sup>th</sup> Quarter 6-10.**

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**Section 6 (cont.)**

D. A commissioner asked whether upfront review of each transaction was needed. He had not been in favor of the earlier model developed by the working group because it opened up insurers to possible litigation. He preferred a requirement that did not add lots of expense. A regulator expressed concern with the language that ultimately became a part of Subsection D. He said he did not believe that it relieved insurers of liability and he did not think it was necessary. He said the draft as it existed did not imply a case-by-case review. He expressed concern that the language was overly broad in saying that a company was relieved of all responsibility if it had sampling, testing or audit. The commissioner said this phrase described the process that an insurer used to meet its obligations and should not be interpreted any other way. **2003 Proc. 2<sup>nd</sup> Quarter 218.**

The regulator asked if it was clear that the insurer was still ultimately responsible and asked why the second sentence was needed. Another regulator opined that it was there to recognize the different distribution systems. An interested party said that the drafters of this additional language did not intend to suggest that this would relieve insurers of their obligations. She opined that this type of flexibility would go a long way toward alleviating concerns within the industry about how to address suitability under different distribution systems. **2003 Proc. 2<sup>nd</sup> Quarter 218.**

Determining what standards to use for determining suitability resulted in extensive discussion. Insurers requested more specific guidance on how their standards should look so that they were reasonably assured that they were adequate. Regulators discussed using membership in an organization as a standard, but rejected that approach. **2003 Proc. 3<sup>rd</sup> Quarter 28.**

A commissioner opined that “assuring recommendations are supervised” was less explicit than requiring a “system to supervise.” Another commissioner said she expected a system demonstration that would assure her that recommendations were supervised, so she did not see much difference between the two wording alternatives. The chair disagreed, saying that there was a shade of difference in the meaning and that a “system” was a stronger requirement. The director said that giving the responsibility to an insurer, general agent or independent agency gave the insurer an opportunity to say it was not the responsible party. **2003 Proc. 3<sup>rd</sup> Quarter 31-32.**

An interested party asked who was ultimately responsible if an insurer contracted with a third party. A regulator responded that the company was ultimately responsible. Another regulator responded that the insurer would probably make the third party partially responsible. The interested party said this was a very important issue to him and he wanted to make sure that everyone had the same understanding. He did not want the companies to say that because they monitored, they had no responsibility. He said he believed that the first sentence in Subsection D gave the insurer a responsibility that was clear. What if in the sampling, testing or audit it was discovered that the insurer had not found what was needed? Another regulator said that in this case the company system was inadequate. **2003 Proc. 2<sup>nd</sup> Quarter 218.**

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**Section 6D (cont.)**

An interested party expressed concern with Section 6D which provides that neither an insurer nor a producer has any obligation to a consumer related to any recommendation if the consumer refuses to provide relevant information, but there is a reasonable basis to believe the recommendation is suitable. The interested party said that this provision was inappropriate because it gave immunity to the producer or insurer for recommending and selling an unsuitable product. **2009 Proc. 3<sup>rd</sup> Quarter 6-90.**

A regulator outlined her concerns with Section 6D, which would allow an insurer to issue an annuity when no recommendation is made. The Working Group discussed, and ultimately rejected, her suggestion. **2009 Proc. 4<sup>th</sup> Quarter 6-8.**

A regulator expressed concern with the wording of Section 6D(1)(b). After discussion, the committee made a grammatical correction. **2010 Proc. Spring 6-5.**

E. There was some consensus to prepare a draft that started with the National Association of Securities Dealers (NASD) standards in place for variable products. An interested party said the primary issue was whether incorporation of the NASD standards meant that regulators were also incorporating the whole supervisory structure of the NASD. **2003 Proc. 2<sup>nd</sup> Quarter 220.**

A regulator suggested a change to Section 6E. He said the draft as written may not be clear in its intent to give a safe harbor for compliance with the NASD rules. He suggested a different paragraph that requires the commissioner to apply guidance from the NASD in coming to a conclusion about compliance. **2003 Proc. 2<sup>nd</sup> Quarter 152.**

The committee considered a suggestion that would grant a safe harbor for compliance with the NASD Rules of Conduct for variable annuities. A regulator opined that it was not necessary, but an interested party said it reduced the possibility of conflict. The regulator asked whether it would remove the ability for the insurance department to take action for violations. Another regulator said that the parties wanting to take shelter in this safe harbor would still have to demonstrate that they were in compliance with those rules. Another interested party suggested adding a sentence to the effect that nothing in this section would detract from a state's ability to enforce the regulation. Another interested party asked if a state can determine whether a person has failed to comply with NASD rules. Another regulator said most states' securities laws include a provision that any violation of NASD or Securities Exchange Commission (SEC) rules or any other federal law will be a violation of state law. An interested party said that if the company complied with the interpretations of the NASD, they had utilized the safe harbor. **2003 Proc. 2<sup>nd</sup> Quarter 218.**

The Working Group struggled with the revisions to this section to address the situation when the consumer refuses to provide relevant information or decides to enter into an annuity transaction that is not recommended. **2009 Proc. 4<sup>th</sup> Quarter 6-10.**

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**Section 6 (cont.)**

F. The Working Group revised this Section in order to clarify the type of review necessary to meet the requirements of this provision. **2009 Proc. 4<sup>th</sup> Quarter 6-7.**

The Working Group added recordkeeping requirements to provide guidance to insurers on what type of information must be retained related to recommendations for any future market conduct examinations. **2009 Proc. 4<sup>th</sup> Quarter 6-11.**

A commissioner suggested that the committee restore Section 6F(1)(d). This provision required insurers to maintain reasonable procedures to independently confirm consumer suitability information. The commissioner also suggested that 6F(2)(b)(ii), concerning an insurer's supervision of contractual performance, be restated, rather than deleted. Another commissioner acknowledged the concerns but stated that the Working Group had been working on the revisions for more than a year, during which time these issues were discussed thoroughly. **2010 Proc. Spring 6-4 to 6-5.**

G. The Working Group revised this Section to make clear the specific responsibilities for insurers and insurance producers under the model for satisfying the training requirements and ensuring suitable sales. **2009 Proc. 4<sup>th</sup> Quarter 6-11.**

H. The Working Group revised this Section in order to clarify its application. **2009 Proc. 4<sup>th</sup> Quarter 6-7.**

A regulator reiterated his concerns about the safe-harbor language in Section 6H. After discussion, the group agreed to draft additional clarifying language for the drafting note to address these concerns. **2009 Proc. 4<sup>th</sup> Quarter 6-8.**

**Section 7. Insurance Producer Training**

The Working Group discussed whether the model should retain the requirement that insurers verify that producers take NAIC-developed ethics and suitability continuing education and verify NAIC-administered producer competency examination certification requirements. **2009 Proc. 1<sup>st</sup> Quarter 6-33.**

The Working Group discussed whether the model should outline and limit the methods an insurer must use to verify producer compliance with continuing education requirements and examination requirements. The Working Group decided to form a Training Subgroup to address this issue. **2009 Proc. 1<sup>st</sup> Quarter 6-33.**

The Working Group discussed whether the model should require an insurer to take steps to ensure that producers are trained on each offered product. The Working Group assigned this task to the Training Subgroup. **2009 Proc. 1<sup>st</sup> Quarter 6-33.**

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**Section 7 (cont.)**

An interested party expressed concern that this section included no grace period or period of time for producers to come into compliance. The interested party suggested that the Working Group consider developing a model bulletin. A regulator stated that interested parties should focus on revising the model regulation. **2009 Proc. 3<sup>rd</sup> Quarter 6-90 to 6-91.**

The Working Group revised this Section to reflect Iowa's training requirements for indexed annuities and other states' training requirements for long-term care insurance partnership policies. **2009 Proc. 4<sup>th</sup> Quarter 6-11.**

**Section 8. Compliance Mitigation; Penalties**

One significant addition to the draft prepared by the parent committee was to add standards for mitigation of penalties if the producer and insurer worked to right any wrongs done to a consumer. **2003 Proc. 3<sup>rd</sup> Quarter 28.**

A regulator said he had a concern about this section because it required an insurer only to take remedial action when it got caught. He suggested changing the word "remedial" to "corrective" to require the company to make a change to prevent future occurrences. An interested party said this section was ambiguous because it did not tell an insurer what type of action to take. He asked if being in compliance with a state's "free look" provision was sufficient, for example. The regulator said it depended on the facts and circumstances of the case. Another regulator said that if the insurer did not resolve the issue, there will be a negotiation with the insurance department and the corrective action would be worked out together. The committee agreed to accept Section 7 with a reference to corrective action. **2003 Proc. 2<sup>nd</sup> Quarter 219.**

One state provided suggestions for amendments to make this section stronger. An interested party said the extensive amendments changed the concepts of corrective action. Another interested party asked what it meant to take "corrective action where appropriate." Another interested party said that if an inappropriate sale occurred, the insurer would work to determine the nature of the situation and may need to refund the money or change some aspect of the contract. An interested party asked if an insurer would be amenable to that type of corrective action when it found out from other sources, such as a complaint filed with the insurance department. A commissioner said the action would also include termination of the producer who made an inappropriate recommendation. The commissioner said he looked at the model as a hammer to encourage companies to make the consumer whole. The interested party suggested language that would say when an insurer discovered someone had purchased an unsuitable annuity, the consumer would be put back in the right position if either the insurer or the producer did not meet his responsibility under the regulation. The commissioner said the purpose of this regulation was to encourage companies to make the consumer right. He would assume that corrective action included putting the person back in the condition he should have been. **2003 Proc. 2<sup>nd</sup> Quarter 153.**

The Working Group added a new subsection that gives the commissioner the discretion to assess appropriate penalties for violations of 6D. **2009 Proc. 4<sup>th</sup> Quarter 6-11.**

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**Section 9. [Optional] Recordkeeping**

An interested party suggested changing the section from saying that the insurer shall maintain records to say that the insurer shall make them available to the commissioner. Regulators agreed with the suggested change. **2003 Proc. 2<sup>nd</sup> Quarter 219.**

An interested party expressed concern with Section 9A(2)(b), which required an insurer to provide each contracting FINRA member broker-dealer with information and reports maintained under Section 7 that are reasonably appropriate to assist the broker-dealer to effectively carry out its supervision responsibilities under the contract. The Working Group requested additional information on this issue. **2009 Proc. 1<sup>st</sup> Quarter 6-32 to 6-33.**

**Section 10. Effective Date**

The Working Group decided to set an effective date for six months after the date the revisions were adopted by a state. **2009 Proc. 4<sup>th</sup> Quarter 6-11.**

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**Chronological Summary of Actions**

September 2003: Model adopted.  
June 2006: Model amended.  
March 2010: Model amended.