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Submitted Electronically to jmatthews@naic.org

The Honorable Doug Ommen
Commissioner, Iowa Insurance Division
Chair, NAIC Life Insurance and Annuities (A) Committee
Two Ruan Center
601 Locust, 4th Floor
Des Moines, IA 50309-3738

Subject: Request for Comments on the 11/19/18 Draft of Proposed Revisions to the Suitability in Annuity Transactions Model Regulation

Dear Commissioner Ommen:

These comments are submitted to the National Association of Insurance Commissioners (NAIC) Life Insurance and Annuities (A) Committee on behalf of the American Council of Life Insurers (ACLI)¹ in response to the request for comments on the 11/19/18 draft of proposed revisions to the Suitability in Annuity Transactions Model Regulation (Model Regulation) (11/19/18 NAIC Draft). ACLI commends the (A) Committee for its continued interest in enhancing the Model Regulation.

Uniform Best Interest Standard of Care for Annuities and Securities

ACLI remains committed to achieving a uniform, national best interest standard of care for annuities and securities across all regulatory platforms. While there are some important differences that still must be reconciled, we are encouraged that there is a significant degree of commonality between the 11/19/18 NAIC Draft and the Securities and Exchange Commission (SEC) Regulation Best Interest proposal issued last April. Both proposals align well with ACLI's objectives in many key respects. We encourage the NAIC to continue its collaboration with the SEC as these important national initiatives reach fruition.

¹The American Council of Life Insurers (ACLI) advocates on behalf of 280 member companies dedicated to providing products and services that promote consumers' financial and retirement security. 90 million American families depend on our members for life insurance, annuities, retirement plans, long-term care insurance, disability income insurance reinsurance, dental and vision and other supplemental benefits. ACLI represents member companies in state, federal and international forums for public policy that supports the industry marketplace and the families that rely on life insurers' products for peace of mind. ACLI members represent 95 percent of industry assets in the United States. Learn more at www.acli.com.

ACLI Guiding Principles

ACLI's comments and proposed modifications to the 11/19/18 NAIC Draft are informed by the following ACLI Board-approved policy principles supporting a best interest standard of care for annuities and securities:

- 1) A recommendation must reflect care, skill, prudence, and diligence.
- 2) A person making a recommendation must address material financial conflicts of interest.
- 3) Consumers should know the types and scope of services they will receive as well as the types of compensation to be received by the person making the recommendation.
- 4) The best interest standard is to apply when a recommendation is made with no further or ongoing obligation to the consumer unless otherwise agreed to.
- 5) Rules must be neutral to business model, product type, and compensation approach such as commissions or sales charges, or other fees or variable compensation.
- 6) The fact that an advisor or firm only offers or recommends proprietary or a limited range of products or product types or receives commissions or other variable compensation is not inconsistent with a best interest standard.
- 7) The best interest standard must not require a recommendation of the least expensive or "best" product available.

ACLI Comments and Proposed Modifications to 11/19/18 NAIC Draft

ACLI's comments and proposed modifications to specific sections of the 11/19/18 NAIC Draft follow. The latter also are reflected in the attached ACLI mark-up of the 11/19/18 NAIC Draft.

Section 1. "Purpose"

Section 1.A.

ACLI appreciates the inclusion of the drafting note in Section 1 explaining NAIC's rationale for refraining from using the phrase "best interest" in the 11/19/18 NAIC Draft. However, ACLI is concerned that if the Model Regulation does not include references to a requirement for an insurance producer or insurer, when no producer is involved, to act in consumers' "best interest," the Model Regulation may be viewed as weaker than the SEC Regulation Best Interest proposal and may not be an effective counter to individual state proposals seeking to impose a fiduciary standard of care in connection with the sale of annuities. Accordingly, two of ACLI's most important proposed modifications to the 11/19/18 NAIC Draft are to insert the phrase "best interest" in Sections 1.A and 6.A., as explained below.

ACLI urges modification to Section 1.A. to read in pertinent part as follows:

"The purposes of this regulation are to require producers and insurers, where no producer is involved, to act in the best interest of consumers when making recommendations of annuity products, to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that are suitable ... "

Section 2. “Scope”

To clarify that the Model Regulation does not, nor is intended to, impose a fiduciary standard of care in connection with the sale of annuities, ACLI proposes modification to Section 2 to read as follows:

“This regulation shall apply to any sale or recommendation of an annuity regardless of whether the person making the recommendation is a fiduciary under state law.”

Section 4. “Exemptions”

Section 4.B.

The proposed modification to Section 4.B. to limit the current exemptions for retirement plans to “[a]nnuities that are not individually solicited” gives rise to significant concern. Subjecting such group annuity contracts to the Model Regulation would unnecessarily complicate and jeopardize the performance of ordinary enrollment and other activities associated with servicing group annuities contracts used by employers to fund retirement plans.

Accordingly, ACLI urges modification to the introductory sentence of Section 4.B. to eliminate this limitation, to read as follows:

“Annuities that are used to fund:”

Section 6. “Duties of Insurers and Producers”

Section 6.A.

Again, ACLI is concerned that failure to expressly require a “best interest” standard of care in connection with the sale of annuities in the Model Regulation may cause it to be viewed as weaker than the SEC Regulation Best Interest proposal and unlikely to be an effective counter to individual state proposals seeking to impose a fiduciary standard of care in connection with the sale of annuities.

Accordingly, in line with our proposed modifications to Section 1.A., ACLI urges modification to Section 6.A. to read as follows:

“A producer, or an insurer where no producer is involved, when making a recommendation of an annuity, shall act in the best interest of the consumer at the time the recommendation is made without placing the producer’s or insurer’s financial interest ahead of the consumer’s interest.”

Section 6.C.(3)

As indicated in our Board-approved guiding principles, ACLI supports increased transparency. Accordingly, ACLI supports the requirement in Section 6.C.(3)(a) for disclosure of a “description of the sources and types of cash compensation to be received by the producer ...”

However, the requirement in current Section 6.C.(3)(b) “[t]o satisfy subparagraph (a) of this paragraph, the producer must disclose a reasonable estimate of the amount of cash compensation ...” and “[w]hether the cash compensation is a one-time or multiple occurrence amount ...” gives rise to significant concern. Such information will not necessarily increase transparency or a consumer’s understanding of a recommendation regarding the purchase, exchange, or replacement of an annuity, and may actually operate to unnecessarily confuse the consumer, particularly if the consumer has not asked for the information.

Accordingly, ACLI urges modification to the introductory sentence of Section 6.C.(3)(b) to read as follows:

“Upon request of the consumer, the producer also shall disclose:”

Section 6.D.(1)(d)(ii)

The current requirement in Section 6.D.(1)(d)(ii), for a producer or insurer to have a reasonable belief that a replacing product will *substantially* benefit the consumer, is not clear. The legal meaning of the word “substantial” is unclear and subject to subjective interpretation. This is likely to make compliance and regulatory oversight of compliance with the requirement uncertain.

Accordingly, ACLI proposes modification to Section 6.D.(1)(d)(ii) to eliminate the word “substantial,” to read in pertinent part as follows:

“(ii) The replacing product will provide a benefit to the consumer in comparison to the replaced product ...”

Section 6.D.(2)

As currently written, Section 6.D.(2) poses several concerns. The legal meaning of the word “diligently” is unclear and subject to subjective interpretation. The phrase “actual financial situation” would introduce a new, undefined concept, as opposed to the section folding in the concept of “suitability” and tracking the definition of the word “suitable” in Section 5.O. Also, there should be recognition that in some situations it could be appropriate for a producer to recommend a more expensive annuity because of factors that distinguish the insurer other than the features and provisions of the annuity.

In view of the above, ACLI proposes modification to Section 6.D.(2) to read as follows:

“(2) The requirements under this section do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended, but the recommendation shall focus on whether the product cost, rates, benefits, features and other contractual provisions of the annuity, and any other factors that differentiate the insurer, are consistent with the consumer’s insurance needs and financial objectives based upon factors disclosed by the consumer or known at the time of the recommendation by the producer or the insurer where no producer is involved.

Section 6.D.(3)

Section 6.D.(3) also should be clarified to take into account that in some situations it could be appropriate for a producer to recommend a more expensive annuity because of particular characteristics of the insurer.

Accordingly, ACLI proposes modification to Section 6.D.(3) to read in pertinent part as follows:

“The consumer profile information, insurer characteristics, and product costs, rates, benefit and features to be considered are those factors generally relevant in making a suitability determination ...”

Section 6.H.(1)(f)

It is appropriate for an insurer to be responsible for compliance with the requirements of the Model Regulation applicable to the insurer and for compliance with requirements, including those

relating to the provision or disclosure of information to the consumer, by producers in connection with recommendations of the insurer's annuity products. However, it is not possible for an insurer to oversee and ensure compliance with the disclosure or other requirements of the Model Regulation by producers acting in connection with other insurers' products. Nor is it possible for insurers to oversee or ensure producers' compliance with requirements of the Model Regulation otherwise not connected with the insurer's products, such as the requirement to disclose *any and all* material conflicts in Section 6.C.(5).

Accordingly, ACLI proposes: (i) modification to Section 8.A. to clarify insurers' responsibility for compliance with the Model Regulation by the insurer and producers in connection with the insurer's annuity products, as explained below; and (ii) deletion of Section 6.H.(1)(f) altogether.

Section 6.J.

ACLI recognizes, as did the Annuity Suitability Working Group, that it will not be possible to determine appropriate modifications to Section 6.J. until the SEC Regulation Best Interest proposal comes closer to fruition. Accordingly, ACLI will delay suggesting any changes to this section in the Model Regulation until that time.

Section 6.K.

ACLI submits that neither the rationale nor need for Section 6.K. (which would extend producer requirements under the Model Regulation to every producer who has materially participated in the making of a recommendation) is clear. Accordingly, ACLI proposes that this section not be included in the Model Regulation.

Section 8 "Compliance Mitigation; Penalties"

As noted above in our comments relating to Section 6.H.(1)(f), while it is appropriate for an insurer to be responsible for compliance with the requirements of the Model Regulation applicable to the insurer, and for compliance by producers in connection with recommendations of the insurer's annuity products, it is not possible for an insurer to oversee and ensure compliance with the requirements of the Model Regulation by producers acting in connection with other insurers' products or with requirements of the Model Regulation otherwise not connected with the insurer's products.

Accordingly, ACLI proposes clarification of the first sentence of Section 8.A to read as follows:

"An insurer is responsible for compliance with the requirements of this regulation applicable to the insurer and responsible for compliance by producers in connection with recommendations of the insurer's annuity products."

Conclusion

ACLI thanks the (A) Committee for the opportunity to submit these comments and for its consideration of our views. We would be glad to answer questions relating to any of our comments above or the attached ACLI Draft. We look forward to continuing to engage with the (A) Committee in its efforts to enhance the Model Regulation to provide a best interest standard of care for annuities.

Sincerely,

A handwritten signature in black ink that reads "J. Bruce Ferguson". The signature is written in a cursive, flowing style.

J. Bruce Ferguson

Cc:

The Honorable Dean L. Cameron, Idaho Insurance Director
Mr. Michael F. Consedine, NAIC Chief Executive Officer