



February 15, 2019

Via Electronic Mail to jmatthews@naic.org

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

The Honorable Stephen C. Taylor
Commissioner, D.C. Department of Insurance, Securities and Banking
Vice Chairman, NAIC Life Insurance and annuities (A) Committee
1050 First Street, NE, Suite 801
Washington, D.C., 20002

Re: Suitability in Annuity Transactions Model Regulation
Exposure Draft dated November 19, 2018

Dear Commissioners Ommen and Taylor:

I am writing on behalf of the National Association of Insurance and Financial Advisors (NAIFA) to provide NAIFA's comments on the 11/19/18 draft of revisions (the "Draft") to the NAIC Suitability in Annuity Transactions Model Regulation (the "Model").

Founded in 1890 as The National Association of Life Underwriters, NAIFA is the oldest and largest association representing the interests of insurance and financial services professionals from every Congressional district in the United States. NAIFA members assist consumers by focusing their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, retirement planning, multiline, and financial advising and investments. Our mission – to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members –

is the reason NAIFA has consistently called upon our members to grow their knowledge while following the highest ethical standards in the industry.

NAIFA commends the NAIC for its efforts to review and consider revisions to the current Model, and we appreciate the open and public approach taken with respect to this project, as well as the opportunities that NAIFA has had to testify on these issues at prior NAIC meetings. While NAIFA believes the existing suitability standard is a strong standard of conduct that vigorously protects consumers through comprehensive rules-based regimes such as those found in both NAIC and FINRA regulations, NAIFA does support the Working Group's efforts to develop a new, appropriate standard of conduct that would apply to recommendations and sales of annuity products. However, we do have several areas of concern and other comments that we would like to bring to your attention regarding the Draft. Our comments and concerns are as follows:

1. NAIFA Supports a "Best Interest of the Consumer" Standard of Conduct.

The business model followed by NAIFA members is relationship, not transaction, based. Most NAIFA members have ongoing, rather than "one and done", business relationships with their clients, and many NAIFA members have multi-generational relationships with client's families. As such, if a NAIFA member is not already focused on what is in the best interests of his or her clients, these clients will seek such a level of service and care elsewhere.

In light of this, NAIFA supports a "best interest of the consumer" standard of care for annuity and securities transactions that would be consistent and uniform across the state and federal regulatory regimes that govern these transactions. Unlike a fiduciary standard, which will drive many firms and producers into a fee-for-service business model, an appropriately drafted best interest standard will preserve the existence of different business models and compensation structures, which will enable small and mid-market consumers to continue to have access to advice, service and a wide range of products.

To incorporate a best interest standard into the Model, NAIFA recommends the following revisions to the Draft:

- a. Revise Section 1 (A) of the Draft to read: "The purpose of this regulation is to require producers and insurers, where no producer is involved, to act in the best interest of the consumer when recommending an annuity product, and to require insurers to set forth standards and procedures for

- recommendations to consumers that are suitable and result in transactions involving annuity products in which the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.”
- b. Revise Section 6 (A) (1) of the Draft 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 interests of the consumer at the time the recommendation is made, without placing the producer’s or the insurer’s financial interests ahead of the consumer’s interest.”

2. NAIFA Requests Clarification of Drafting Note Following Section 1(B).

NAIFA is not clear as to the intent and intended purpose of the referenced proposed drafting note, and requests clarification of the language used in and intent behind the note so that we may better evaluate the intended purpose of the drafting note.

3. NAIFA Opposes Required Disclosure of Specific Compensation Amounts.

NAIFA believes that mandatory disclosure of the amount of compensation that the producer will receive, in the manner set forth in Section 6 (C) (3) (b) of the Draft, will be averse to the consumer’s best interests for the following reasons:

- a. Focusing on only one item of expense—producer compensation—could lead to the consumer misunderstanding the product’s total costs.
- b. Commission disclosure would encourage buyers to look only for the lowest commission policy rather than the best combination of policy values and service.
- c. Commission disclosure would disrupt the sales process by drawing attention and focus away from the consumer’s needs and the ability of the policy to meet those needs. This could result in fewer consumers who are adequately protected.
- d. Commission disclosure could lead to client pressure on agents to illegally rebate a portion of the agent’s commission as an inducement to make the sale.
- e. One of the primary goals behind the amendments being considered is to help consumers determine the impartiality of the producer in making a recommendation. NAIFA does not see how the producer telling the consumer that “I will make between \$800 and \$1,200 for selling you XYZ Annuity” will further this goal. It would and should not be a surprise to

anyone that the agent will be compensated for the marketing and sale of an annuity; likewise, telling the consumer the specific dollar amount (or a range of amounts) of compensation to be received by the agent for the sale of a specific product will be of no benefit to the consumer in his/her efforts to evaluate the producer's impartiality.

We therefore recommend that the following revisions be made to Section 6 (C) of the Draft:

- a. Revise the prefatory language at the beginning of Section 6 (C) to read: "Prior to or at the time of the recommendation or sale of an annuity, the producer, or insurer where no producer is involved, shall prominently disclose (except as provided for in Subsection 3 (b)) to the consumer:"
- b. Revise the first line of Section 6 (C) (3) (b) to read as follows: "Upon request of the consumer, the producer shall disclose:"

4. NAIFA Recommends Revisions to The Definition of "Material Conflict of Interest".

The Draft currently provides that "Any and all material conflicts of interest" must be disclosed by the producer or insurer to the consumer prior to the recommendation. In the interests of increased transparency and consumer knowledge, NAIFA supports the disclosure of all material conflicts of interest. However, the current definition of "material conflict of interest"—as "a financial interest of the producer...in the sale...that a reasonable person would expect to influence to impartiality of a recommendation."--would create a situation that would lead to all compensation received by the producer potentially being characterized as a "material conflict of interest" (along with the negative connotations that go with this term) and therefore to the required disclosure of all compensation. This problem is exacerbated by the fact that the current definition of "material conflict of interest" gives little guidance as to what is a "material conflict of interest" or how an agent can determine what needs to/does not need to be disclosed under this provision.

While it is not a complete solution to the problems discussed about, NAIFA recommends that as a partial solution to these issues the definition of "Material conflict of interest" in Section 5 (K) of the Draft be revised to read as follows: "Material conflict of interest' means a financial interest of the producer, or the insurer where no producer is involved, in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation, provided,

however that ‘material conflict of interest’ does not mean or include the compensation typically received by the producer for the marketing, sale and service of an annuity.”

5. NAIFA Recommends the Inclusion of Additional Provisions to Preserve Different Business Models and Forms of Compensation.

NAIFA strongly believes that any amendments made to the Model should not favor or negatively impact the use of any current business model or form of compensation. In light of the enhanced standard of care being contemplated as part of this process, it is therefore important that the revised model expressly state what should not be presumed and that certain conclusions should not be “read into” the amended model as a result of the proposed amendments. In simple terms, the Model should be clear on what the new standard does not require as well as what it does require.

The inclusion of the provisions recommended below could be accomplished in several ways—by listing them as subparts of a new Section 6 (A) (3) of the Draft, or by placing them at whatever locations in the Draft that the Committee feels is appropriate. NAIFA’s primary concern is that these provisions need to be included in the Draft; how they are included and where in the draft they are placed is a secondary concern. The suggested language of these provisions is as follows:

“(3) Nothing contained in this section shall be deemed to:

- (a) Cause any producer or insurer to be treated as a fiduciary, or impose a duty of loyalty on any producer or insurer, under common law or any federal or state law or regulation;
- (b) Require a producer or an insurer to determine that the recommended product is the “best” or “cheapest” product;
- (c) Require the recommendation of the annuity product with the lowest one-time or multiple occurrence compensation structure;
- (d) Require or prohibit the use of any particular form or type of compensation or compensation arrangement, or any particular type of annuity distribution model (such as proprietary distribution or third-party distribution), nor shall the use of any such form of compensation or distribution model, in and of itself, be a violation of any of the requirements of this regulation or create a presumption that a recommendation or sale fails to comply with the requirements of this section 6 (A);

- (e) Require disclosure of, or impose any restrictions or prohibitions on, the health, retirement or other employee benefits to which a producer may be entitled; or
- (f) Impose on a producer or an insurer any continuing obligation to the consumer after the recommended annuity is issued.”

6. NAIFA Recommends the Deletion of / Revisions to the Exemption for Certain Direct Response Solicitations.

Section 4 (A) of the Model (and the Draft) provides an exemption from coverage under the regulation for “[d]irect response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation”. This provision creates an “uneven playing field” between the activities of direct response entities versus producers, since it seems to be saying that if a direct response solicitation includes a recommendation that is not based on information collected from the consumer (perhaps some type of broadly distributed annuity solicitation?), than that situation, and the recommendation made, would be exempt from the requirements of the regulation. This exemption as drafted therefore appears to give direct response companies the ability, under certain circumstances, to make recommendations that would not be covered by the regulation.

NAIFA fails to see any public policy rationale for this exemption. NAIFA recommends either that this exemption i) be deleted from the Model or ii) be revised to read as follows: “A. Sales or purchases of an annuity where no recommendation is made.

We appreciate your consideration of this letter and our comments; please email or call me if you have any questions.

Sincerely,



Gary A. Sanders
Counsel and Vice President, Government Relations