

What You Must Know NOW About the NAIC Best Interest Model to Protect Your Business



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A Quick Overview to Understanding Best Interest Documentation and Disclosure Obligations



If you are a financial professional offering fixed and indexed annuity products in your business, please take note. States are passing best interest standards, whether by legislation or through regulatory process, based on the NAIC's 2020 updated suitability model regulation for annuity sales.

As the insurance industry adapts to this new landscape, it's important for you to understand how this impacts your business conduct and brings new requirements for your client records. There are guidelines and obligations of which to be mindful. For an overview, our team has more information available on the NAIC's model regulation and the four obligations contained within it. **Please contact us for up to 20 pages of more information on how these new changes impact you and your liability.**

Among these four obligations is the Disclosure Obligation, which requires financial professionals to provide the following information to a client before an annuity recommendation or sale:

1. Your role in the transaction, along with details of scope and terms of your relationship with the client.
2. The kinds of products for which you're licensed and you're authorized to sell.
3. Your company appointments and a quick indicator of whether you primarily conduct business with:
 - a. One insurance company.
 - b. Two carriers or more.
 - c. Two carriers or more, but are primarily contracted with one carrier.
4. A description of how you are paid:
 - a. Commission.
 - b. Fees.
 - c. Other payment(s).
5. A notice that says you will provide more information to the client, should they request it, about cash compensation, which includes:
 - a. A reasonable estimate of compensation that may be provided using a range of amounts or percentages.
 - b. The frequency and amount of cash compensation, which can be provided using a range of amounts or percentages.

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A Quick Overview to Understanding Best Interest Documentation and Disclosure Obligations



Under the Disclosure Obligation, you also must have a full understanding of the client's needs. You are required to have a reasonable basis to think that your client has been educated on all the features of an annuity contract before the sale. These features include but are not limited to product fees, expenses, and limitations. You must also communicate the basis for your recommendation to the client.

Now and in days ahead, you will see many carriers opting to add an agent section to their suitability paperwork that validates that the financial professional has met Disclosure Obligation requirements. Several carriers have noted their plans to use this agent attestation section to confirm that the Disclosure Obligation has been fulfilled. That said, some key relationships of ours have noted that most insurance carriers are not including a disclosure of material conflicts of interest in their suitability forms. This disclosure was not included in the model regulation template produced by the NAIC.

This is just one small confirmation of how the primary responsibility for client disclosure falls on the financial professional. This insurer attestation does not satisfy your obligation, as the financial professional in the transaction, under the updated rule.

To help you be prepared for compliance with Disclosure requirements and other Obligation requirements, Safe Money Resource has partnered with a leading-edge sales and documentation software provider that covers this concern and more.

The disclosure form, which must be signed by the client and by you, the financial professional, must be included in your client file. You should also give a copy of the disclosure form to your client. Carriers have said that they intend to conduct audits to validate these forms are being completed and kept on record by advisors and agents. A financial professional will have to produce this form in the case of an audit and/or a complaint. State and federal regulators will also require this form in the course of investigations. Missing forms could mean that a financial professional faces penalty of fines or even disciplinary action.

Any documentation regarding the solicitation, recommendation, or sale of an annuity product should also be kept inside your client files as part of the financial professional's responsibility under the Disclosure Obligation. This includes all illustrations materials, applications materials, and disclosure forms.

To learn more about how our partnership can help you with edge-to-edge fulfillment with Disclosure, Documentation, and other Obligations, call us at (800) 790-7791.

Protecting Your Business: Practical Insights for Client File Recordkeeping and Maintenance



Your client files are a cornerstone of your business. If they are incomplete, they are inadequate, or they don't exist at all, your business could be subject to liability. With states passing the NAIC's 2020 model regulation, producers are held to a higher standard under the Documentation obligation for client recordkeeping and retention.

Substandard client files could expose your firm to regulatory fines as well as litigation. One effective response to protect your business is to keep detailed, easy-to-access documentation for each of your client relationships. This will help ensure that you are well-prepared in the event that a regulator or a carrier sought such information from your business.

What Should You Keep in Client Files?

The following information is not intended to be an exhaustive list. Please consider it to have basic guidelines for standard records practices in our industry. Carriers often have different requirements for documentation from one another. Financial professionals are encouraged to become familiar with the documentation requirements of the carriers with which they do business for more information.

Additionally, regulations vary from state to state. We encourage you to review the regulations that apply in the states that you do business in, as well.

Considerations for what to keep in client records include:

- Documentation from any conversations with clients that regard the solicitation of the sale, the basis for recommendations made, and the issue of the contract or policy. That also includes any follow-up discussions with the client post-issue.
- A digital CRM system will help record all client interactions in permanent fashion, which will help you with preparation should carriers or regulators request it.
- Copies of all sales and advertising materials, including brochures, webinar or seminar invites, webinar or seminar event materials, workbooks, credibility stack materials, educational articles, and so on that were used during the sales process. This is not an all-inclusive list of what you might keep copies.
- Suitability information that was utilized in the basis of your recommendation.

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- A turnkey digital system is a good solution to have in your documentation process, as you can benefit from features such as permanent records, unchangeable date-stamps, and digitized file protection from threats like natural disaster.
- Copies of any illustrations that were used in the course of the sales process.
- All product recommendations made, including the annuity product selection method or tool that was used, and all applicable notes and paperwork used to make the recommendation.
- Again, a turnkey digital system that captures your annuity selection process will help in cementing the effectiveness of your documentation process.
- The actual product application materials and any additional forms required by the carrier issuing the policy.
- A signed delivery receipt, if the sales process included any mailed materials.

The More You Document, the Better

Under the Documentation obligation of the NAIC's model regulation, producers must be very conscientious of a "show your work" standard. While financial professionals already abide by such practices, this heightened standard is formalizing it to be more so.

For documenting discussions with clients, the more details that you can document the better. It's crucial to keep painstakingly thorough notes regarding any client meetings. The better that your note-taking is, down to the smallest detail, the more protection that you may be creating for your business. Think about it from the perspective of a carrier or regulator: If there isn't documentation, it didn't happen.

That drives home on the point of keeping your client files detailed, thorough, and up-to-date. Also, financial professionals should be conscious in the manner of how they take notes. Written notes on legal pads or other such mediums can be alterable or editable at later times than during a meeting. That means that these sorts of note-taking may be contestable in a courtroom setting or other scenario in which your business is at risk.

Having records of client meeting details recorded in a digital format can make you better-protected, as these digital records usually aren't alterable, editable, or changeable. Your forward-thinking team at Safe Money Resource has these sorts of accessible and easy-to-use digital resources available for your use.

Protecting Your Business: Practical Insights for Client File Recordkeeping and Maintenance



How Long to Retain Client Files?

Carrier requirements for retention of client files will vary from insurance company to insurance company. Likewise, state regulations also tend to vary in terms of mandated retention timespan. Financial professionals are strongly encouraged to understand the regulations of the states in which they do business. You should also review the requirements of the carriers that you do business with for more information.

That being said, here are some general guidelines that are helpful to keep in mind. Keeping records for all active clients for the term duration of their policy plus three years is a solid rule of thumb.

For inactive clients, a good guideline is keeping records for three years past when activity ends with that respective client relationship.

Financial professionals should know that the responsibility of keeping their clients' information safe and protected is ultimately theirs.

With this changing regulatory environment, agents and advisors need a partner that has their back and helps them prepare for this new landscape with as few disruptions to their business operations as possible.

At Safe Money Resource, your support team is ahead of the curve, and we're partnered with the best sales recommendation, documentation, and compliance solutions in the industry.

Our unique relationships also keep you with your finger on the pulse of how new regulatory matters affect you, as we dialogue with leading stakeholders at the forefront of advocacy for the independent distribution of annuity and protection products.

Ready to put those partnerships and solutions to work for you? Don't wait.

Get started and solidify your competitive advantage by calling us at (800) 790-7791 to discuss how you can keep your business protected and going strong.



A CHANGING REGULATORY LANDSCAPE FOR ANNUITY TRANSACTIONS

Best practices for meeting the new best interest standard for fixed annuity sales

Fixed annuities play a vital role in helping consumers provide for their own financial security in retirement. As market disruptions make abundantly clear, fixed rate and fixed indexed annuities are useful tools for accumulating assets, managing risk, and creating a guaranteed lifetime income stream. Fixed annuities should be considered a valid part of a prudent retirement and financial management plan for some portion of a consumer's assets.

All fixed annuity stakeholders share a critical objective: to protect consumers. Throughout much of the past two decades, the annuity industry has operated under a regulatory regime that ensured this consumer protection through a suitability standard, requiring insurers and producers to make suitable annuity recommendations based upon relevant information obtained from clients so that those clients' financial needs and objectives at the time of the transaction were appropriately addressed.

However, in a regulatory environment that included a new Department of Labor "fiduciary rule" and efforts by the Securities and Exchange Commission (SEC) to apply a best interest standard on broker-dealers, the National Association of Insurance Commissioners (NAIC) convened a working group to review and revise its suitability model regulation. On February 13, 2020, the National Association of Insurance Commissioners (NAIC) adopted heightened consumer protections to be applied to the sale or recommendation of an annuity. Under the revised standard, producers are required to **act in the best interest** of the consumer when making the recommendation, and insurers are required to establish and maintain a system to supervise such recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are **effectively** met.

This paper discusses the best interest requirements for fixed annuity sales and offers guidance in shaping the development of best practices for annuity professionals in meeting this new standard.


2003

NAIC Model Regulation 275: Suitability in Annuity Transactions – A Brief History

The NAIC first adopted a model regulation addressing the activities of insurers and producers when making recommendations to consumers to purchase annuity products in **2003**, with the adoption of the Senior Protection in Annuity Transactions Model Regulation (#275). This original model regulation was narrowly focused to protect individuals aged 65 and older. It had also been a common practice for state insurance regulators to address consumer protection through their respective state's Unfair Trade Practices Act.



2006

In **2006**, the NAIC revised this model regulation to expand the regulation's suitability protections to consumers of all ages — not just those 65 years or older. Given this expanded scope, the name of the model regulation was changed to Suitability in Annuity Transactions. As its name implied, the standard in recommending the purchase of annuity required a producer — or an insurer where no producer was involved — to have reasonable grounds to believe the recommendation was *suitable*, based on the facts disclosed by the consumer and the consumer's financial situation and needs.

Although the model did not define suitability information, producers were required to make reasonable effort to obtain information pertaining to the consumer's financial situation, tax status, and investment objectives, along with any other information that the producer used or considered in making the recommendation. For insurers, these early models required that they have a system of supervision in place that was reasonably designed to ensure suitable sales — and allowed insurers (with some additional oversight requirements) to outsource that supervision system to a third party.

2010

Four years later, in **2010**, the NAIC adopted significant amendments to the suitability model regulation. Broadly, the 2010 revisions clarified and expanded insurer supervision requirements; defined suitability information to include a list of 12 data points to be collected from the consumer and considered by the producer prior to making an annuity recommendation; required both general annuity suitability training and product-specific training for producers prior to soliciting the sale of an annuity; and created a "safe harbor" provision, allowing that sales made in compliance with FINRA suitability requirements would be deemed to satisfy the requirements outlined in the NAIC model regulation.

In addition to the annuity professional's duty to have a reasonable basis for the determination of a suitable recommendation, the 2010 model imposes a duty upon the insurer to maintain a system of supervision for a secondary suitability review of every annuity application prior to issuing the policy. Furthermore, the liability of any sale deemed unsuitable is placed squarely on the insurer. Even if the insurer contracts with a third party, such as a distribution partner, to provide a system of supervision for the secondary review of each application, the insurer is not relieved from the liability of an unsuitable sale.

2017

In **2017**, the NAIC Life Insurance and Annuities (A) Committee once again established a working group with the charge to review and revise, as necessary, the suitability model regulation. At the time, there was a great deal of focus by policymakers, consumer advocates, regulators, and industry stakeholders on what should be the appropriate standard of care for financial professionals serving the investment, savings, and retirement needs of retail customers. The U.S. Department of Labor's fiduciary rule was already partially in effect and had survived a number of legal challenges in the federal district courts; meanwhile, the SEC was working on the creation of a uniform best interest standard of care for registered investment advisers and broker-dealers, pursuant to a directive under Dodd-Frank. It was in this environment that state insurance regulators turned toward revising the suitability standard for annuity transactions.



2020

The NAIC Annuity Suitability Working Group worked over the course of over two and a half years to review and revise the 2010 model regulation, finalizing its changes on December 19, 2019. The full (A) Committee approved the changes on December 30, and, on February 13, **2020**, the NAIC Executive (EX) Committee and Plenary formally adopted a revised Suitability in Annuity Transactions Model Regulation¹ that replaced the old suitability principles with a new best interest standard to be met for annuity transactions.

The New Best Interest Standard for Annuity Transactions

As set forth in the first section of the revised model regulation, the purpose of the regulation is to require producers² to act in the best interest of the consumer when making an annuity recommendation and to require insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of the consumer at the time of the transaction are effectively addressed. The Purpose section goes on to state that nothing in the regulation should be construed to create or imply a private cause of action, nor to subject a producer to civil liability under either the new best interest standard of care or under standards governing the conduct of a fiduciary or a fiduciary relationship.

Applicability of the regulation is on any sale or recommendation of an annuity and the application of the best interest obligation is on any producer who has exercised material control or influence in the making of the recommendation and who has received direct compensation as a result of the recommendation or sale, regardless of whether the producer had direct contact with the consumer.

Duties of Producers – The Best Interest Obligation

Under the best interest obligation, when making a recommendation of an annuity and under the circumstances known at the time the recommendation is made, ***a producer must act in the best interest of the consumer without putting the producer's or the insurer's financial interest ahead of the consumer.***

A producer complies with the best interest requirement by satisfying four obligations: **Care, Disclosure, Conflict of Interest, and Documentation.**

The specific duties related to each of these four obligations are described in the following pages. NAFA has highlighted language that is new to the 2020 Model Regulation.

¹The NAIC kept the name of the model regulation as "Suitability in Annuity Transactions" in order to maintain the exemption for certain annuities from the Securities Act of 1933 and continued confirmation of state regulatory authority provided under Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection act of 2010. In order to continue this annuity "safe harbor" provision, states must adopt any successor regulation that exceeds the requirements of the 2010 Suitability in Annuity Transactions Model Regulation. Even though this is no longer a suitability standard, by keeping it so named it meets the Dodd-Frank requirement of it being a "successor regulation," and the 2020 model includes a Drafting Note stipulating that.

²A "producer" is defined as a person or entity required to be licensed under state law to sell, solicit or negotiate insurance, including annuities. For the purpose of this regulation, a producer includes an insurer where no producer is involved.



1. CARE OBLIGATION

A producer, when making an annuity recommendation, must exercise reasonable diligence, care, and skill in doing all of the following:

1. Know the consumer's financial situation, insurance needs and financial objectives;
2. Make a reasonable inquiry regarding the annuities that are available to the producer and have an understanding of those available recommendation options;
3. Have a reasonable basis to believe the recommendation option effectively addresses the consumer's financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer's profile information; and
4. Communicate to the consumer the basis or bases for the recommendation.³

In order to satisfy the above requirements of the Care Obligation, producers must also:

- ✓ Make reasonable efforts to obtain the consumer profile information* from the consumer prior to making the recommendation.
- ✓ Consider the types of products the producer is authorized and licensed to sell that would address the consumer's financial situation, insurance needs and financial objectives.
 - o This does not require the producer to analyze or consider any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation.
 - o Producers are held to standards applicable to producers with similar authority and licensure.
- ✓ Have a reasonable basis to believe the consumer would benefit from certain features of the annuity (such as annuitization, death or living benefit; or other insurance-related features).

The 2020 Model Regulation's Care Obligation further describes certain conditions and caveats related to these requirements, including:

- Requirements under the Care Obligation do not create a fiduciary obligation or relationship and only create a regulatory obligation.
- The factors generally relevant in making a determination regarding an annuity recommendation — such as the consumer profile information, characteristics of the insurer, and product costs, rates, benefits, and features — may vary depending on the facts and circumstances of a particular case, but each factor may not be considered in isolation.

³ The communication to the consumer regarding the basis or bases for the recommendation may be made either orally or in writing; however, under the Recordkeeping requirement in the 2020 Model Regulation, producers are required to maintain a record of the disclosures made to the consumer, including summaries of any oral disclosures.



- The requirements of the Care Obligation apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of the purchase or exchange and any riders or similar product enhancements.
- Satisfaction of the Care Obligation does not mean that the annuity with the lowest compensation structure shall necessarily be recommended.
- Producers do not have ongoing monitoring obligations under the Care Obligation (unless such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer).
- Producers are not required to obtain any license other than a producer license with the appropriate line of authority to sell, solicit, or negotiate insurance, including, but not limited to any securities license, in order to fulfill the duties and obligations contained in this regulation — provided the producer does not give advice or provide services that are otherwise subject to securities laws or otherwise engages in activities requiring other professional licenses.

CONSUMER PROFILE INFORMATION

As set forth under the Care Obligation, a producer must know the consumer's financial situation, insurance needs and financial objectives. Having this knowledge requires producers to make reasonable efforts to obtain the consumer's profile information prior to making the recommendation. Under the revised 2020 Model Regulation, there is a 14-point definition of "consumer profile information," the majority of which were included in the 2010 Model's "suitability information."

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|--|--|
| (1) Age; | (9) Existing assets or financial products, including investment, annuity, and insurance holdings; |
| (2) Annual income; | (10) Liquidity needs; |
| (3) Financial situation and needs, including debts and other obligations; ¹ | (11) Liquid net worth; |
| (4) Financial experience; | (12) Risk tolerance, including, but not limited to, willingness to accept non-guaranteed elements in the annuity; ³ |
| (5) Insurance needs; ² | (13) Financial resources used to fund the annuity; and |
| (6) Financial objectives; | (14) Tax status. |
| (7) Intended use of the annuity; | |
| (8) Financial time horizon; | |

¹ The inclusion of a consideration of a consumer's "debts and other obligations" is new to the 2020 Model Regulation.

² "Insurance needs" is new to the revised model; it was not included in the 2010 suitability information.

³ The reference here to a "willingness to accept non-guaranteed elements in the annuity" is a new piece of information that a producer must make reasonable efforts to obtain in order to make a determination of the whether the annuity effectively addresses the consumer's financial situation, insurance needs and financial objectives. "Non-guaranteed elements" are newly defined in the 2020 Model Regulation to mean the premiums, credited interest rates (including any bonuses), benefits, values, dividends, non-interest based credits, charges, or elements of formulas used to determine any of these are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.



The Care Obligation as it relates to an exchange or replacement of an annuity:

In the case of an exchange or replacement of an annuity, the requirements under the 2020 Model Regulation are similar to the 2010 version, requiring the producer to take into consideration whether:

1. The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (e.g., death, living or other contractual benefits), or be subject to increased fees, investment advisory fees, or charges for riders or product enhancements;
2. The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and
3. The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months. (NOTE: The 2010 model is 36 months.)

2. DISCLOSURE OBLIGATION

The Disclosure Obligation is the second of the four obligations that a producer must satisfy in order to act in the best interest of the consumer. The new disclosure requirements are set forth in the body of the 2020 model regulation and are also included in a new appendix to the regulation (Appendix A – “Insurance Agent (Producer) Disclosure for Annuities) that must be co-signed and dated by both the producer and consumer. The Model Regulation requires states to adopt a form that is substantially similar to **Appendix A**, and the producer is required to “prominently disclose” the information contained in the appendix to the consumer.

Prior to the recommendation or sale of an annuity, the producer must disclose the following:

1. A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;
2. A description of the types of products that the producer is licensed and authorized to sell;
3. Whether the producer is authorized, contracted/appointed, or otherwise is able to sell insurance products from:
 - a. One insurer;
 - b. Two or more insurers; or
 - c. From two or more insurers, although primarily contracted with one insurer.
4. A description of the sources and types of cash and non-cash compensation the producer will receive for the sale of the annuity, including if by:
 - a. Commission as part of a premium or by other remuneration received from the insurer, intermediary, or other producer;
 - b. By fee as a result of a contract for advice or consulting services; or
 - c. Other.



5. A notice of the consumer's right to request additional information regarding the cash compensation. If the consumer so requests, the producer must also disclose:
 - a. A reasonable estimate of the amount of cash compensation to be received, which may be expressed as a range of amounts or percentages; and
 - b. Whether the cash compensation is a one-time or a multiple-occurrence amount. If it is a multiple-occurrence amount, the producer must disclose the frequency and the amount of the occurrence, which may be stated as a range of amounts or percentages.

Finally, the Disclosure Obligation requires that, prior to the time of the recommendation or sale of an annuity, a producer must have a reasonable basis to believe the consumer has been informed⁴ of various features of the annuity including the following:

- The potential surrender period and surrender charge;
- The potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity;
- Mortality and expense fees;
- Investment advisory fees;
- Any annual fees;
- Potential charges for and features of riders or other options of the annuity;
- Limitations on interest returns;
- Potential changes in non-guaranteed elements of the annuity;
- Insurance and investment components; and
- Market risk.

3. CONFLICT OF INTEREST OBLIGATION

The Conflict of Interest Obligation is the third of the four obligations under the new best interest standard. Under this obligation, producers are required to “identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.”

The regulation does not elaborate on what might be considered reasonable management of a material conflict of interest. However, a “material conflict of interest” is defined as a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation, but cash compensation and non-cash compensation are not considered a material conflict of interest.

⁴ The 2010 version of the Model Regulation requires the producer to have a reasonable basis to believe the consumer has been reasonably informed.



4. DOCUMENTATION OBLIGATION

The Documentation Obligation — the final obligation that must be satisfied in order to comply with the best interest standard — includes three requirements, the latter two of which are tied to two (additional) new forms that must be signed by the consumer (and co-signed by the producer), if applicable.

At the time of the recommendation, a producer must:

1. Make a written record of any recommendation and the basis for the recommendation;
2. Obtain a customer-signed statement, on a form substantially similar to **Appendix B**, documenting:
 - a. A customer's refusal to provide the consumer profile information; and
 - b. The customer's understanding of the ramifications of not providing his or her consumer profile information – or, providing insufficient consumer profile information; and
3. Obtain a customer-signed statement, on a form substantially similar to **Appendix C**, acknowledging the annuity transaction is not recommended if the customer decides to enter into an annuity transaction that is not based on the producer's recommendation.

Both the Disclosure and the Documentation Obligations come into play under the 2020 Model Regulation's Recordkeeping requirement, which, for producers, requires maintenance of records for a specific time period (which varies, depending upon the state) of the information collected from the consumer (including information related to the consumer profile and, now, copies of the executed appendices); disclosures made to the consumer, including summaries of any oral disclosures; and other information used in making the recommendation that was the basis for the annuity transaction.

Duties of Insurers Related to Supervision

- (1) Except where a transaction is not based on a recommendation, insurers may not issue an annuity unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives, based on the consumer's profile information.
- (2) Insurers must establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its producer's compliance with the regulation. Insurers are required to establish and maintain:
 - a. Reasonable procedures to inform its producers of the requirements of the regulation, which shall include the incorporation of the requirements of the regulation into relevant producer training manuals;
 - b. Standards for producer product training and reasonable procedures to require its producers to comply with the regulation's producer training requirements;
 - c. Product-specific training and training materials that explain all material features of its annuity products;
 - d. Procedures for the review of each recommendation prior to issuance of the annuity designed to ensure that there is a reasonable basis to determine the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives;



- e. Reasonable procedures to detect recommendations that are not in compliance with the Care Obligation, Transactions Not Based on a Recommendation, Prohibited Practices,⁵ and the Safe Harbor provision;⁶
- f. Reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided the required information to the consumer;
- g. Reasonable procedures to identify and address suspicious consumer refusals to provide the consumer profile information;
- h. Reasonable procedures to identify and eliminate sales contests, sales quotas, bonuses, and non-cash compensation based on the sales of specific annuities within a limited period of time.⁷

As is the case under the 2010 model regulation, insurers must provide an annual report to senior management regarding the efficacy of the supervision system, any exceptions found, and corrective action taken or recommended — although now the regulation specifies that the annual report must be written.

Insurers are still able to contract with third parties for the supervision system, and all obligations pertaining to the contractual performance (e.g., monitoring, auditing when appropriate, and certification of the performance) are unchanged. Insurers are still ultimately responsible for compliance regardless of whether the supervisory functions are contracted out.

Finally, an insurer is not required to include in its supervision system a producer's recommendations of products other than those annuities offered by the insurer, which is the same as the 2010 version. But, the 2020 model regulation also excludes from the insurer's required system of supervision consideration of or comparison to any other options available to the producer or the compensation relating to those other options.

An Expanded Safe Harbor

The 2010 version of MDL 275 provides that sales made in compliance with FINRA suitability and supervision requirements satisfy the requirements of the regulation. The revised 2020 model regulation expands that "safe harbor" to "all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue." Financial professionals include registered broker-dealers and registered representatives of a broker-dealer; registered investment advisers and investment advisers representatives associated with a registered investment adviser; and ERISA or IRC plan fiduciaries. Insurers are still required to have a reasonable basis to believe that the annuity would effectively address a particular consumer's financial situation, insurance needs, and financial objectives, but such an analysis may be based on the information provided from either the financial professional or the professional's supervising entity.

⁵ The 2020 Model Regulation makes no substantive changes to the requirements pertaining to either Transactions Not Based on a Recommendation or the Prohibited Practices sections in the 2010 version of the rule.

⁶ The procedures that an insurer may use to detect non-compliant recommendations include confirmation of the consumer's consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations, and programs of internal monitoring. Insurers may apply such methodologies and/or confirmation techniques to detect non-compliant recommendations after issuance or delivery of the annuity.

⁷ It is noted that this is not intended to prohibit employee benefits (such as health insurance, office rent, office support, retirement benefits, etc.) as long as the benefits are not based upon volume of sales for a specific annuity within a limited period of time.



Producer Training Requirements

The revised model regulation maintains all requirements in the 2010 model regulation pertaining to producer training but adds some additional new training to cover education related to the new best interest standard of conduct. Producers must now complete training regarding the appropriate sales practices and requirements of the amended regulation within six (6) months after the regulation's effective date.

If producers have already completed the one-time, four-credit course required under the 2010 version of the regulation, they may either take a new four-hour course that would incorporate the new standard of conduct or take a one-time one (1) credit training course specific to the changes set forth in the amended regulation.

Enforcement of the Revised Regulation

As the NAIC Annuity Suitability Working Group deliberated about making changes to the 2010 model regulation, they did so with the thought that there should be harmonization, where possible, with other regulatory regimes across the financial services industry; nevertheless, a priority was to ensure that the regulation remain insurance focused. The revised model regulation makes this clear, explicitly stating that the authority to enforce compliance with the regulation is vested exclusively with each state's insurance commissioner.

Recordkeeping

The 2020 revised model regulation is largely similar to the 2010 version; however, new to the model regulation's recordkeeping requirements is that producers must now maintain records pertaining to the disclosures that they made to the consumer, including records that summarize any oral disclosures. Here, if a producer has communicated to the consumer the basis or bases for the annuity recommendation verbally (as is allowed under the Care Obligation), he or she must, as part of the recordkeeping requirements, document a summary of that oral disclosure. Similarly, a summary of an oral disclosure to the consumer of the various features of the annuity (required by the Disclosure Obligation) should also be documented and maintained. In terms of the length of time that records must be maintained and made available to the state insurance commissioner, the 2020 model continues to provide individual state authority to determine the required time period. And, insurers are still allowed, if they choose, to maintain documentation on behalf of a producer.

Conclusion

NAFA believes that annuity professionals should — and do — act in the best interest of their clients when making a recommendation to purchase an annuity, and believes that such a standard helps to ensure that the insurance needs and financial objectives of their clients are effectively met. Indeed, the exceedingly low rate of agency administrative actions against producers and the exceedingly high customer satisfaction rate for fixed annuities bears this out. We have endorsed the adoption of best interest rules that provide meaningful and effective consumer protections, while preserving access to annuity products and that support those who manufacture, distribute, and sell these critical retirement and financial planning products. NAFA promotes best interest rules that are process based and that establish a workable, consistent, and objective regulatory framework that producers and insurers can rely upon for compliance.



APPENDIX A

INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES

Do Not Sign Unless You Have Read and Understand the Information in this Form

Date: _____

INSURANCE AGENT (PRODUCER) INFORMATION (“Me”, “I”, “My”)

First Name: _____ Last Name: _____

Business\Agency Name _____

Website: _____

Business Mailing Address: _____

Business Phone: _____ Business Email: _____

National Producer Number _____ State _____

CUSTOMER INFORMATION (“You”, “Your”)

First Name: _____ Last Name: _____

What Types of Products Can I Sell You?

I am licensed to sell annuities to you in accordance with state law. If I recommend that You buy an annuity, it means I believe that it effectively meets Your financial situation, insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds and mutual funds, also may meet Your needs.

I offer the following products:

Fixed or Fixed Indexed Annuities Variable Annuities Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any noninsurance financial products that I am licensed and authorized to provide advice about or to sell.

Mutual Funds Stocks/Bonds Certificates of Deposits

Whose Annuities Can I Sell to

You? I am authorized to sell:

Annuities from only one (1) insurer Annuities from two (2) or more insurers

Annuities from two or more insurers, although I primarily sell annuities from:

How I'm Paid for My Work:

It's important for You to understand how I'm paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are generally paid to Me by the consumer. If You have questions about how I'm paid, please ask Me.

Depending on the particular annuity You buy, I will or may be paid cash compensation as follows:

Commission, which is usually paid by the insurance company or other sources. If other sources, describe:

Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.

Other (Describe): _____

If you have questions about the above compensation I will be paid for this transaction, please ask me.

I may also receive other indirect compensation resulting from this transaction (sometimes called "non-cash" compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or other sources.

By signing below, you acknowledge that you have read and understand the information provided to you in this document.

CUSTOMER SIGNATURE

DATE

AGENT/PRODUCER SIGNATURE

DATE



APPENDIX B

CONSUMER REFUSAL TO PROVIDE INFORMATION

Do Not Sign Unless You Have Read and Understand the Information in this Form

Why are you being given this form?

You're buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company needs information about you, your financial situation, insurance needs and financial objectives.

If you sign this form, it means you have not given the agent, broker, or company some or all the information needed to decide if the annuity effectively meets your needs, objectives and situation. You may lose protections under the Insurance Code of _____ if you sign this form or provide inaccurate information.

Statement of Consumer/Purchaser:

- I **REFUSE** to provide this information at this time.
- I have chosen to provide **LIMITED** information at this time.

CONSUMER SIGNATURE

DATE



APPENDIX C

Consumer Decision to Purchase an Annuity NOT Based on a Recommendation

Do Not Sign Unless You Have Read and Understand the Information in this Form

Why are you being given this form?

You're buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company has the responsibility to learn about you, your financial situation, insurance needs and financial objectives.

If you sign this form, it means you know that you're buying an annuity that was not recommended.

Statement of Purchaser:

I understand that I am buying an annuity, but the agent, broker or company did not recommend that I buy it. If I buy it **without a recommendation**, I understand I may lose protections under the Insurance Code of _____.

CUSTOMER SIGNATURE

DATE

AGENT/PRODUCER SIGNATURE

DATE