January 29, 2021

The Honorable Doug Ommen
Commissioner, Iowa Insurance Division
Chairman, NAIC Annuity Suitability (A) Working Group
Two Ruan Center
601 Locus, 4th Fl
Des Moines, IA 50309

VIA Email: jmatthews@naic.org

RE: Model #275 Revisions FAQ Implementation Document Open Meeting 12-14-2020

Dear Commissioner Ommen,

Thank you for convening the Annuity Suitability (A) Working Group and interested parties in an open meeting on December 14, 2020, to review comments received on the NAIC Model #275 draft FAQ implementation document. On behalf of our respective members, the undersigned organizations offer this letter as follow up to the discussion during the Working Group meeting.

As explained in detail below, we respectfully request further consideration of our comments regarding the comparable standards safe harbor, the producer training requirement, and the provisions related to conflicts of interest. The October 2 Joint Trades comment letter and mark-up set forth recommendations from the industry as to the interpretation of those provisions, and we appreciated the opportunity to explain our rationale during the Working Group meeting. However, given that the open meeting had a robust agenda, time simply did not allow for us to fully explain and address questions and comments regarding our views and concerns.

Comparable Standards Safe Harbor

As I hope you will agree, we worked constructively and collaboratively with the Working Group to support the development of revisions to the Model that would provide meaningful and workable enhancements to the standards that must be followed by producers and insurers when recommending or selling an annuity. The safe harbor provision in Section 6E is a critical component of the Model given that the annuity industry is subject to extensive regulation by multiple federal and state regulatory bodies. The expanded safe harbor included in the final revisions to the Model is designed to provide relief for insurers and producers from the risks and burdens facing insurers and producers as they endeavor to achieve and maintain full compliance with multiple overlapping regulations that are aligned in terms of application and public policy objectives but are not fully identical in terms of the specific regulatory requirements.

During the Working Group meeting, it was suggested that the interpretation of the safe harbor recommended by the Joint Trades would create an unlevel playing field that would favor producers operating under the best interest standard imposed under the Securities and Exchange Commission's Regulation Best Interest (Reg BI), the fiduciary standard applicable to federally-regulated investment advisers under the Investment Advisers Act of 1940, or the fiduciary standards imposed under the Employee Retirement Income Security Act of 1974 (ERISA). Nothing could be further from the truth.

As you know, financial professionals subject to Reg BI, the Advisers Act, and ERISA must comply with extensive and significant regulatory obligations, including duties of care and loyalty, product and relationship disclosure requirements, conflict of interest responsibilities, recordkeeping rules, and more. The purpose of the safe harbor, in our view, is not to create a preference for certain categories of producers but to recognize and acknowledge that consumers will receive no greater level of protection against improper conduct by requiring insurers and producers to separately comply with the particular requirements of multiple regulations designed to achieve the same objectives.

When viewed through this lens, we struggle to understand what is to be gained from an interpretation of the safe harbor that would require insurers to perform all of the supervisory functions outlined in Section 6C(2). The safe harbor clearly requires insurers to comply with Section 6C(1), and we have no objection to that requirement. However, the safe harbor is designed to allow insurers to rely on their distribution partners to supervise the conduct of their representatives in accordance with the comparable standards under which they operate. Insurers do, of course, have an obligation to supervise these financial professionals and their firms to ensure that they actually achieve and maintain compliance with the applicable comparable standard, but we do not believe there is any added consumer benefit to requiring the sort of duplication that would be necessary if Section 6C(2) is deemed to apply to recommendations made in reliance on the safe harbor.

Similarly, we believe the comparable standards referenced in the safe harbor would require that financial professionals be appropriately trained on general annuity principles, the specific annuity products they can recommend to their clients, and the rules they are required to follow when making such recommendations. Even where such training is not an explicit requirement of the comparable standards, it is difficult to imagine how a financial professional could satisfy their best interest or fiduciary duties without receiving such training. However, some of the dialogue during the Working Group meeting suggested that the training requirements in Section 7 of the Model should be required even for producers operating under the safe harbor. Again, we fail to see why this would be necessary. Rather, we worry that requiring training in accordance with Section 7 could actually cause confusion for producers who would be required to complete training on the specific requirements of the Model, which could, in some cases, differ from those that would apply under the applicable comparable standard.

Moreover, we think it is important to note that the safe harbor is structured to ensure that the insurance commissioner, director, or superintendent retains their authority to examine for compliance with the comparable standard and to take appropriate corrective action as necessary where the producer or insurer has failed to comply with the comparable standard. The interpretation we are urging you to adopt would not, in any way, represent any sort of deference or delegation of jurisdiction to other regulatory bodies.

Based on the foregoing, we strongly urge the Working Group to revise the draft FAQs to clarify, as recommended in the Joint Trades comment letter, that producers operating under the comparable standards

safe harbor need not separately comply with the specific requirements set forth in the Model as long as they satisfy the conditions set forth in the safe harbor.

Producer Training

As you heard during the December 14 meeting, the industry is approaching the early adopter states for greater guidance on training requirements and program availability to achieve compliant implementation. We respectfully encourage the Working Group to recognize that existing licensed producers can remain compliant with Model 275 by completing either the one-hour or four-hour course within the first six months of the effective date of the Model in each state. Individual producers strive to remain current in their professional obligations and carriers are required to validate and supervise that training. Courses are being approved and rolled out but often not until the formal effective date. A six-month grace period is necessary to provide adequate time for training providers and licensees to schedule and complete appropriate courses, and for insurers to update their systems and policies to effectively supervise compliance with the training requirements.

Additionally, the option to complete the one credit training course should remain available for as long as the prior version of the Model remains in effect in any jurisdiction. This will ensure that producers who satisfy the training requirements in states where the prior version is still in effect would not have to retake the entire four credit training course and can instead take the one credit training course to ensure that they understand how the rules have changed.

Conflicts of Interest

We would also like to comment further on Question 9 concerning conflicts of interest. During the Working Group meeting, you asked whether our example of a producer acting as an attorney is similar to a producer acting as an investment adviser for conflict disclosure purposes. We agree those are similar situations and both lie outside the definition of material conflict of interest as stated in the Model. The Model specifically says a material conflict is "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." It does not include cash or non-cash compensation. We agree with points made by other trade associations that this definition covers a financial interest that affects a producer's impartiality in recommending one annuity versus another. Thus, while there are other kinds of conflicts, such as conflicts that might arise from a producer wearing other professional hats (e.g., investment adviser, attorney, accountant), those are not the kind of conflicts addressed by this regulation. If such conflicts exist, requirements under other regulatory regimes would apply but should not be confused with requirements under this regulation. In the case of an attorney, for example, professional rules of conduct address conflicts arising under the person's law license while the Model requires disclosure of producer compensation for annuity sales. Accordingly, we would like to modify our suggested response to Question 9 so that it would read as follows:

> The revised model defines material conflict of interest 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." Cash and non-cash compensation are not considered to be material conflicts of interest, though the revised model does require disclosure about producer compensation and impose restrictions on certain types of non-cash compensation, as described in Q14/A14 below. An ownership interest (such as where a producer has a material ownership interest in an insurance company whose products the producer is authorized to recommend) is one example of a material conflict of interest that would be subject to the revised model's conflict of interest obligation. Depending on the particular facts

and circumstances, a producer could also be deemed to have a material conflict of interest if, for example, he or she borrowed funds directly from a certain insurer (except for loans taken by a producer under his or her own personal insurance policy or contract) or has a spouse, partner, or close relative who works as a senior executive for a particular insurer.

Conclusion

We appreciate the opportunity to collaborate with the Working Group in connection with the development of the 2020 revisions to the Model. The changes made to the Model with respect to the safe harbor, the training provision, and conflicts of interest were the result of significant and open discussion and debate. Respectfully, we urge the Working Group to ensure that the FAQ is consistent with the text and underlying intent of these provisions.

Thank you in advance for considering these comments, and please do not hesitate to contact any of the undersigned you have any questions or if we can be of any further assistance in connection with the draft FAQs.

Sincerely,

AMERICAN COUNCIL OF LIFE INSURERS (ACLI)



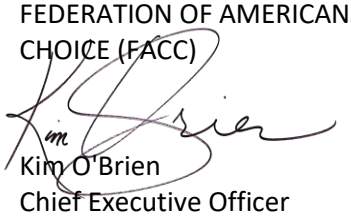
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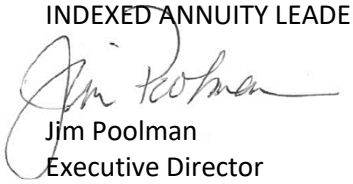
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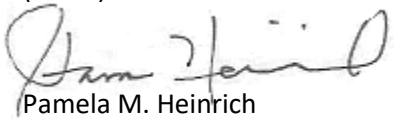
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