October 2, 2020

Submitted Electronically 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

Re: Model #275 Revisions FAQ Implementation Document
Exposure Draft dated September 4, 2020

Dear Commissioner Ommen:

The undersigned organizations appreciate the opportunity to provide comments to the National Association of Insurance Commissioners Annuity Suitability Working Group (the "Working Group") regarding the September 4, 2020 draft Model #275 Revisions FAQ Implementation Document (the "Exposure Draft"). Attached hereto is a marked version of the Exposure Draft that reflects our proposed modifications. We respectfully urge the Working Group to revise the Exposure Draft as set forth in the attached markup.

If you have questions about anything in this letter, or if we can be of any further assistance in connection with this important regulatory effort, please feel free to contact any of the undersigned individuals.

Sincerely,

AMERICAN COUNCIL OF LIFE INSURERS (ACLI)

Roberta Meyer
Vice President & Associate General Counsel
robbiemeyer@acli.com

COMMITTEE OF ANNUITY INSURERS (CAI)
For the Committee of Annuity Insurers, By:

Eversheds Sutherland (US) LLP
ericarnold@eversheds-sutherland.com
susankrawczyk@eversheds-sutherland.com

FINANCIAL SERVICES INSTITUTE (FSI)

David Bellaire
Executive Vice President & General Counsel
david.bellaire@financialservices.org

INDEXED ANNUITY LEADERSHIP COUNCIL (IALC)

Jim Poolman
Executive Director
jimpoolman@gmail.com

INSURED RETIREMENT INSTITUTE (IRI)

Jason Berkowitz
Chief Legal & Regulatory Affairs Officer
jberkowitz@irionline.org

NATIONAL ASSOCIATION FOR FIXED ANNUITIES (NAFA)

Pamela M. Heinrich
General Counsel
pam@nafa.com

DRAFT JOINT TRADES COMMENTS – 10/1/20

Draft: 9/4/20

Comments are being requested on this draft document by Oct. 2, 2020. Comments should be sent only by email to Jolie Matthews at jmatthews@naic.org.

SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION (#275)
BEST INTEREST STANDARD OF CONDUCT REVISIONS
FREQUENTLY ASKED QUESTIONS

This Frequently Asked Questions (FAQ) document is intended to specifically address those questions that are likely to arise as the states work to adopt the revised Suitability in Annuity Transactions Model Regulation (#275) and to assist in the uniform implementation and enforcement of its provisions across all NAIC member jurisdictions. No provision of this FAQ document is intended to supersede the specific language in Model #275.

This FAQ document is offered to any state that chooses to use it. It is not intended to expand the content of the model regulation but provides interpretive guidance regarding certain aspects of its provisions.

GENERAL

Q1. Why did the NAIC decide to revise the model to include a best interest standard of conduct?

A1. The revised model was developed, in part, in response to the U.S. Department of Labor's (DOL) fiduciary rule, which was finalized in April 2016 but vacated in its entirety in March 2018. The DOL fiduciary rule would have expanded the scope of who is considered a fiduciary to federal Employee Retirement Income Security Act of 1974 (ERISA) retirement plans and individual retirement accounts (IRAs) to include a broader set of insurance agents, insurance brokers and insurers. Separately, the U.S. Securities and Exchange Commission (SEC) released a proposed rule package in May 2018, which included Regulation Best Interest (Reg BI). The SEC finalized Reg BI in June 2019. The final Reg BI establishes a best interest standard of conduct for broker-dealers beyond the existing suitability obligation that applies to federally registered variable annuities. Recognizing the SEC's and the DOL's role in the regulatory landscape and believing that consumers are better protected when, to the extent possible, there is harmonization of the regulations enforced by the states, the SEC and the DOL, the NAIC revised the model to establish a framework for an enhanced standard of conduct that is more than the model's current suitability standard but not a fiduciary standard.

Q2. How did the NAIC develop and promulgate these revisions to the model?

A2. The NAIC had a robust, collaborative and transparent process that included a wide array of stakeholders through the drafting and vetting processes. The NAIC's Annuity Suitability (A) Working Group completed the revisions to the model with the input of consumer groups, regulators, academics, and industry trade associations in open deliberations. Ultimately, the revised model is a work product that will provide enhanced consumer protections and amend regulation of annuity transactions in a sensible way.

~~Q2.~~Q3. How does the Harkin amendment, Section 989J of the Dodd-Frank Act apply to the revised model?

~~A2.~~A3. Section 989J confirms state authority to regulate the sale of fixed and fixed indexed annuities and provides an exemption for such annuities from federal securities regulation when certain conditions are met, including when the state in which the contract is issued or the state in which the insurer issuing the contract is domiciled:1) has adopted requirements that "substantially meet or

exceed the minimum requirements" established by the 2010 version of the NAIC's Suitability in Annuity Transactions Model Regulation (#275); and 2) "adopts rules that substantially meet or exceed the minimum requirements of any successor modifications to the model regulation[]" within 5 years of the adoption by the NAIC. The only exception to this requirement is if the product is issued by an insurance company that adopts and implements practices on a nationwide basis that meet or exceed the minimum requirements established by the NAIC's Model #275, "and any successor thereto," and is therefore subject to examination by the State of domicile or by any other State where the insurance company conducts sales of such products.

The NAIC considers the 2020 revisions to be a successor modification to the model that exceeds the requirements of the 2010 revisions, which is reflected in a drafting note to Section 1—Purpose:

"Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") specifically refers to this model regulation as the "Suitability in Annuity Transactions Model Regulation." Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation."

As such, states need to work toward adopting the 2020 revisions within 5 years after its adoption by the full NAIC membership in February 2020 to maintain ~~their authority to regulate the sale of fixed annuities~~ the status of fixed and fixed indexed annuities meeting the requirements of Section 989J as outside the scope of federal securities regulation.

EXEMPTIONS

~~Q3.~~**Q4.** **What is the intent of the exemption to the revised model's provisions under Section 4A to allow a consumer in response to a direct response solicitation to purchase an annuity product where no recommendation is made based on information collected from the consumer?**

~~A3.~~A4. This exception from the rule was in the 2010 model rule and was not changed in the 2020 version. A direct-response solicitation is a solicitation through a sponsoring or endorsing entity solely through mails, telephone, the Internet, ~~a digital platform,~~ or other mass communication media ~~that does not involve a communication directed to a specific individual by a natural person, or by a simulated human voice~~.

BEST INTEREST STANDARD OF CONDUCT

~~Q4.~~Q5. What is the best interest standard of conduct and how would a producer or insurer satisfy it?

~~A4.~~ A5. To satisfy the best interest obligation, a producer or an insurer must satisfy the four obligations: 1) care; 2) disclosure; 3) conflict of interest; and 4) documentation.

To satisfy the four obligations, when making a recommendation, producers must:

- Know the consumer's financial situation, insurance needs and financial objectives;
- Understand the available recommendation options;
- Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives;
- Communicate the basis of the recommendation to the consumer;
- Disclose their role in the transaction, their compensation, and any material conflicts of interest; and

- Document, in writing, any recommendation and the justification for such recommendation.

~~Q5.~~Q6. **What types of recommendations fall under the best interest standard of conduct?**

~~A5.~~A6. All recommendations made by a producer or insurer to purchase, exchange or replace an annuity product must comply with the best interest standard of conduct. Specifically, as defined in Section 5M, a "recommendation" is advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice. A recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

~~Q6.~~Q7. **Does the best interest standard of conduct apply to a producer who never meets the client, but assists a producer in making a recommendation to the client?**

~~A6.~~A7. ~~Yes, under~~ Under Section 6A(5), a producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, has an obligation to comply with the revised model's best interest standard regardless of whether the producer has had any direct contact with the consumer. Compensation tied to overall sales volume of a firm or producer would not be considered "direct compensation" for purposes of this section. A producer will not be treated as having exercised material control or influence merely because the producer provides or delivers marketing or educational materials, product wholesaling or other back office product support, or general supervision of another producer.

CARE OBLIGATION

~~Q7.~~Q8. What is the intent of language in Section 6A(1)(c), which states "Producers shall be held to standards applicable to producers with similar authority and licensure?"

~~A7.~~A8. The intent of this language is to help to ensure that in any compliance or enforcement action by a state insurance regulator related to the model, a producer's recommendation is compared only to other producers possessing the same insurance license line(s) of authority as the producer making the recommendation as opposed to being compared to investment advisers or possibly higher-level fiduciaries, such as trust officers or plan sponsors under the federal Employee Retirement Income Security Act of 1974 (ERISA) for compliance and enforcement purposes.

DISCLOSURE OBLIGATION

~~Q8.~~Q9. To satisfy the disclosure obligation, Section 6A(2)(a) requires a producer to provide the completed "Insurance Agent (Producer) Disclosure for Annuities" form in Appendix A prior to a recommendation or sale of an annuity. Can ~~, can~~ a producer provide the form at the initial client meeting? Is the producer required to update the form and provide it again or can the producer provide it once and satisfy this obligation?

~~A8.~~A9. ~~Yes, a~~ A producer can satisfy the disclosure obligation by providing a completed form during the initial client meeting. However, if, after the completed form is provided to the client, the information on the completed form becomes out-of-date prior to a recommendation or sale, the producer is expected to provide the consumer with an updated form.

Q10. Do producers who are relying on the safe harbor in Section 6E have to provide the completed "Insurance Agent (Producer) Disclosure for Annuities" form in Appendix A?

A10. No, a producer operating in compliance with business rules, controls and procedures that satisfy a "comparable standard" (as defined under the revised model) is not required to also provide disclosure on the form in Appendix A. Under such circumstances, the producer need only comply with the disclosure requirements imposed under the applicable comparable standard (e.g., the disclosures contemplated by Reg BI and Form CRS).

CONFLICT OF INTEREST OBLIGATION

~~Q9.~~**Q11.** **As defined in Section 5I(2), a material conflict of interest does not include cash compensation or non-cash compensation. What ~~, what~~ other type of financial interest would be considered a material conflict of interest? Is it only an ownership interest as referenced in Section 6A(3)?**

~~A9. A producer who is also dually registered as an investment advisor under state securities law is required under Section 6A(3) to reasonably manage and disclose the related conflicts of interest. This management must commence when the producer first meets with a potential customer even before the dually licensed producer knows the ultimate capacity in which the producer will be acting. The actual capacity when the producer executes a specific transaction may not be known early in the relationship and the related professional or contractual obligations may not be determined based upon the specific facts and circumstances and the consumer profile information until later in the relationship, thus creating a conflict of interest for the producer. The dually licensed producer should assume that both Model #275 and the Investment Advisers Act apply, and that the producer must manage and disclose the conflict of interest.~~ A11. 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, while acting as a producer:

- Makes a personal loan of money or securities to a customer, or accepts such a loan from a customer; or
- Acts as an attorney for the same customer.

~~Q10.~~**Q12.** **Under Section 6A(3), to satisfy the conflict of interest obligation, what must a producer do to identify and avoid or reasonably manage and disclose a material conflict of interest? Examples?**

~~A10. The differences in professional and contractual obligations between a producer acting in the consumer's~~ Formatted: Not Highlight ~~best interest at the time of the transaction and an investment advisor acting in the consumer's best interest over the term of a professional advisory contract are substantial. Managing this conflict of interest will require more than simple disclosure. The dually licensed producer must ensure that the customer has a timely comprehension of the producer's varied interests in the relationship decisions and~~ A12. The appropriate steps to satisfy the obligation to identify and avoid or reasonably manage and disclose material conflicts of interest will depend on the specific facts and circumstances. In some cases, material conflicts of interest can be effectively managed by a producer by informing his or her client of the conflict, and answering any questions the client may have regarding the conflict and confirming that the client is willing to continue working with the producer. In other instances, informed disclosure alone may be insufficient and the producer will have to take additional steps to ensure that the conflict does not cause the producer to make a recommendation that is not in the client's best interest or that puts the producer's own financial interests ahead of the client's. In such instances, a producer could, for example, consult with his or her manager,

supervisor, or agency principal to assess whether a conflict is inappropriately influencing the impartiality of the producer's recommendations. Finally, there may be material conflicts of interest that cannot be effectively mitigated through informed disclosure and additional measures. In those situations, the producer would have to avoid engaging in the activity or relationship that would give rise to the conflict, or, alternatively, abstain from making the recommendation. In all cases, the producer must ultimately and before making a recommendation have a reasonable basis to believe the producer's ~~recommended~~ professional relationship or capacity along with any related annuity recommendation effectively addresses the consumer's financial situation, insurance needs and financial objectives.

SUPERVISION SYSTEM

~~Q11.~~Q13. Do these revisions require insurers to set up new supervision systems to ensure producer compliance with this new standard of conduct?

~~A11.~~A13. No, but the revisions do add additional insurer supervision requirements by requiring insurers to establish and maintain reasonable procedures in three additional areas:

- To assess whether a producer has provided to the consumer the information required by the revised model.
- To identify and address suspicious consumer refusals to provide consumer profile information.
- To identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time.

~~Q12.~~Q14. Section 6C(2)(h) requires an insurer as part of its supervision system to identify and eliminate sales contests, quotas, bonuses, and non-cash compensation based on the sale of specific annuities within a limited period of time. What type of business practices is this provision intended to address?

~~A12.~~A14. ~~The requirements of Section 6C(2)(h) are not intended to prohibit general incentives regarding sales of an insurance company's products where there is no emphasis on a particular product.~~ As the ~~provisions~~ provision states, insurer business practices involving sales contests, quotas, bonuses and non-cash compensation based on the sale of ~~a~~ specific ~~annuity or~~ annuities within a ~~specified or~~ limited period of time are prohibited and should be identified and eliminated. For example, this provision would apply where a producer's eligibility for a particular bonus is tied to his or her sales of one particular annuity product during a particular month. However, the requirements of Section 6C(2)(h) are not intended to prohibit general incentives regarding sales of an insurance company's products where there is no emphasis on the sale of specific annuities within a limited period of time.

SAFE HARBOR

Q15. Are insurers and producers required to comply with the requirements of the revised model if they are acting in compliance with rules imposed by other regulators that meet or exceed the requirements of the revised model?

A15. No, Section 6E provides a safe harbor for recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy "comparable standards" (as defined in the revised model), such as the best interest standard under Reg BI, the fiduciary standard applicable to federally regulated investment advisers under the Investment Advisers Act of 1940, or the fiduciary standard imposed under ERISA. Under such circumstances, producers and insurers need not comply with any of the specific requirements included in the revised model, including the care, disclosure, conflict of interest, and documentation obligations, as well as the insurer supervision and producer training requirements.

However, insurers do have important supervisory obligations with respect to annuity recommendations made by financial professionals relying on the safe harbor:

- Section 6E(2) specifies that, even where the safe harbor applies, insurers remain subject to the obligation under Section 6C(1) to "not issue an annuity recommended to a consumer 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 consumer profile information."
- Section 6E(3) provides that an insurer must monitor the conduct of the financial professional relying on the safe harbor or the entity responsible for supervising the financial professional based on information collected in the normal course of the insurer's business.

TRAINING

Q16 Are producers who are relying on the safe harbor required to complete the 4-hour training course (or, if eligible, the optional 1-hour training course), which includes training on the new standard of conduct under the revised model?

A16. No. Producers relying on the safe harbor are not required to take the training prescribed by the revised model; the training required under the appropriate "comparable standards" (as defined in the revised model) will suffice. Insurers should, however, ensure that producers operating under the safe harbor have nonetheless completed appropriate training on the specific annuity products they are authorized to recommend and sell.

~~Q13.~~**Q17. Do producers who are not relying on the safe harbor in Section 6E have to complete additional training on the new standard of conduct even if they have already completed the existing annuity training requirements?**

~~A13.~~A17. Yes, Section 7 requires a producer who has already completed the existing annuity training requirements prior to a state's effective date of the revised model to complete within 6 months of that date either a four credit training course or an additional one-time one credit training course on the appropriate sales practices, replacement ~~an~~ and disclosure requirements under the revised model. ~~In adopting this section, a state could choose a different timeframe for this requirement.~~

Q18. Under what circumstances would a producer be permitted to take the additional one credit training course rather than the full four credit training course? What is the difference between the one credit and four credit training courses? For how long should the one credit training course be available as an option?

A18. The one credit training course is available as an option only to producers who have previously completed a four credit training course that met the requirements of the prior version of the model. The four credit training course would include information on all of the topics listed in Section 7B(3) of the revised model, whereas the one credit training course would include only information on the appropriate standard of conduct, sales practices, replacement and disclosure requirements. The one credit option was included in the revised model because the NAIC recognized that adoption of the revised model would not cause any changes in the information provided on the other topics covered by the four credit training course required under the prior version of the model.

The option to complete the one credit training course should be left 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.

In sum, producers who are not relying on the safe harbor should be permitted to satisfy their training obligations by completing either (a) the four credit training course under the revised model OR (b) a combination of the four credit training course under the prior version of the model AND the one credit training course under the revised model.

The preceding applies to situations where a producer has taken an approved four credit training course in a state that has not adopted the amended NAIC Model and then seeks to satisfy the training requirement by taking the new one credit course in a state that has adopted the amended NAIC Model.

Q19. Can producers satisfy their training obligations under the revised model by taking the new four credit training course or the new one credit training course before the revised model takes effect in a particular state?

A19. The revised model provides for reciprocity so producers that operate in multiple jurisdictions do not have to retake the same training multiple times. If a producer has completed a properly approved training course in a state where the revised model has been adopted (whether or not such revised model has become effective), the producer should not be required to complete the required training again in that same state after the effective date or in another state that subsequently adopts the revised model.

Q20. Can producers satisfy their training obligations under the prior version of the model in a state which has not yet adopted the revised model by taking the new four credit training course?

A20. The new four-credit training course includes all of the topics that were required to be covered under the prior version of the model (with information on the best interest standard of conduct now required under the revised model). As such, if a producer has completed a properly approved four credit training course in a state that has adopted the revised model, the producer should not be required to also complete a course that satisfies the requirements of the prior version of the model in a state that has not yet adopted the revised model.

Q21. Under Section 7B(6), if a producer who was already qualified by taking the old four credit training course fails to take the updated four credit training course or the one hour training course within six months after the effective date of the amended regulation, what training must a producer take to become requalified to offer annuities again?

A21. A producer who does not timely meet the requirements to take the training courses but has already taken the old 4 credit training course may satisfy such new requirements by taking either the one credit or the four credit training course (which shall remain available) at any point after the expiration of the six month time period. The producer should cease all annuity sales activities until the updated training courses have been completed.